Filed

Submitted Nov. 10. 1880

12-177

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~205.~~ 288

JAMES JIFKINS, THOMAS JIFKINS, AND JAMES JIFKINS, JR., APPELLANTS,

vs.

ADDISON SWEETSER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 9, 1876.

Questions — as to removal of cause, and finality of decree.

SUPREME COURT OF THE UNITED STATES.

No. 205.

JAMES JIFKINS, THOMAS JIFKINS, AND JAMES JIFKINS, JR., APPELLANTS,

vs.

ADDISON SWEETSER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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1 Among the rolls, records, and judicial proceedings of the circuit court of the United States in and for the western district of Pennsylvania may be found the words and figures following: Filed at No. 10, of May term of said court, for the year A. D. 1875, wherein Addison Sweetser is plaintiff, and James Jifkins, James Jifkins, j'r, and Thomas Jifkins, are respondents.

Equity docket entries.

Rickets, Ward & McClintock, counsel for plaintiff.
Hoyt & Handley, & S. A. & W. S. Purviance, counsel for resp'd'ts.

Record certified from the common pleas court of Luzerne County, Pennsylvania.

ADDISON SWEETSER
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND Thomas Jifkins.

Docket entries in C. P. court of Luzerne County, P'a, No. 3, August term, 1868.

1868, June 20, printed bill in eqnity filed (see files).

Now, 3rd July, 1868, by precipe filed, John Handly directs his name and that of H. M. Hoyt, esq., to be entered as attorneys for defendants (see files).

Now, 15 July, 1868, rule is entered upon defendants to file their plea, demurrer, or answer to the bill in this case within thirty days after service of notice of this rule (see files), cert. exit.

Now, 7 August, 1868, answer of defendants filed.

2 Now, August 8, 1868, on motion and by leave of court the defendants allowed to file an amendment to answer as within contained; same day amended answer filed (see files).

Now, 22 Aug., 1868, answers returned served on plaintiffs (see files).

Now, Aug. 27, 1868, amended plea filed, and permitted by the court, as follows: "And also the benefits of an act of the general assembly of Pennsylvania, approved April 22, A. D. 1856, entitled 'An act for the greater certainty and more secure enjoyment of real estate'" (see files).

Now, 3 Aug., 1869, the plaintiff having declared that he has no more testimony to take, rule is entered upon the defendants to close the taking of their testimony within thirty days after notice of this rule (see files).

Now, 18 Aug., upon motion in open court, time for def'ts to close testimony is enlarged until 1st Oct., 1869 (see C. M.).

Now, 23 Aug., 1869, on motion in open court, E. S. Osborne, esq., is appointed master in this case to report upon the testimony when filed by the examiner (see C. M.).

Now, 16 September, 1869, court on motion extended the time to take testimony for defendants till 9th Oct., 1869 (see C. M.).

Now, 16 Sept., 1869, on motion in court, it is further ordered and agreed that on failure of Samuel Sherrerd, of Somerville, N. J., to appear before E. N. Willard, esq., examiner, in pursuance of sub-

3 pœna, then the said E. N. Willard be appointed a comm'r to take the deposition of the said Sherrerd with same force and effect as if commission had been regularly issued (se' C. M.).

Now, 2 Oct., 1869, on motion in open court, and upon agreement of attorneys, R. C. Shoemaker, esq., is appointed additional examiner in the above case to take depositions of witnesses (see C. M.)' cert'f. ex't.

Now, Dec. 9, 1869, on motion in open court, rule is entered on pl'ffs to close their rebutting testimony within thirty days from service of this rule. The defendants having completed the testimony upon their part, ce'tf'd copy ex't. eo die.

Now, March 21, 1870, pl'ff's testimony filed (see files).

Now, March 25, 1870, court appoints E. S. Osborne, and E. P. Darling, master in chancery, to report on the evidence in this case, upon agreement that no further delay upon the hearing (see C. M.).

Now, March 28, 1870, deposition on part of del'ts filed; same day plaintiff's rebutting testimony filed.

Now, Jan'ry 10, 1871, the defendants move the court and file an application to extend munc pro tunc the time for taking depositions on behalf of defendants, so as to include the 25 October, 1869, and court directs the application to be filed (see C. M).

Now, Jan'ry 5, 1871, report of master filed (see files).

Now, 20 Feb'ry, 1871, opinion of court is read and filed, the prayer for relief is refused and the bill is dismissed with costs. E. L. Dana, A. L. Judge.

4 Now, Feb'ry 12, 1872, affidavit and recognizance for appeal to the Supreme Court filed (see files).

Now, March 5, order made in this case by *by* Judge Cangughan, on March 31, 1870, filed as follows: "The masters, who have been appointed by the court to hear this case, not being able to attend at this time, the parties, by their counsel, appear before the judge at his chambers, and ask him to appoint Geo. R. Bedford to act as master in their stead, and the judge thereupon appoints him, and will cause a formal appointment to be made at the meeting of the court on Monday next, the parties agreeing that the said master may immediately act (see files).

Now, May 23, 1872, remittitur from the supreme court filed. The decree of the court below dismissing the plaintiff's bill is reversed, and the bill is ordered to be reinstated; the cause to be referred by the court below to the same master or some other to take an account of the rents, issues, and profits received by the defendants from the property in question, together with an account of debts paid by them, due by the plaintiff, with an equitable allowance for services rendered by the defendants, ascertaining the amount due by either party to the other party, so as to enable the court of common pleas to make a final decree in the premises according to equity (see files).

5 Now, Jan'ry 8, 1872, it is ordered that it be referred to Geo. R. Bedford, esq., one of the masters of this court, to take an account between the parties in this cause as directed by the order of the supreme court made herein per curiam (se' C. M.).

Now, Oct. 24, 1872, an order is granted upon Geo. R. Bedford, master to whom this cause stands referred, to take an account between the parties, to speed the proceedings before him, and to make his report without delay (see C. M.).

Now, Nov'r 21, 1872, affidavits filed. Same day court appoints M. B. Houpt, esq., builder, of Willesbarre, to make a personal examination of the Washington Hall property, with the view of ascertaining whether any, and, if so, what repairs are needed, and to report the same to the court on Monday, Nov'r 25, 1872; and the court further order and direct

that James Jitkins open up and exhibit all parts of said property to said M. B. Hupt (see C. M.).

Now, Dec. 12, 1872, the report of M. B. Hupt in this cas' ordered to be filed by the court, and that the repairs reported needed, to be made immediately the defendants in this case (see C. M.).

Now, April 6, 1874, by consent of counsel, an allowance of two hundred dollars to the master is hereby made, to be accounted in the costs of the case (see C. M.).

Now, Aug. 24, 1874, petition for defendants for removal of above case to the United States circuit court for the western district of Pennsylvania filed. Same day affidavits for removal and bonds filed (see files).

Now, Aug. 28, 1874, on motion of counsel for pl'ff, and with consent of counsel for defendants, the order heretofore made in this case staying all proceedings be, and the sameis hereby, revoked so far as *far as* to fix the time for the argument of said motion on the 21st day of Sept., 1874, at 10 a. m. (see C. M.).

Now, Sept., 21, 1874, court order and direct the further hearing of the defendants' application to remove this cause to the United States circuit court for trial, to be continued until Saturday, Sept. 26, 1874, at 10 o'clock a. m. (see files).

Now, Sept. 26, 1874, the hearing of the motion for removal of this cause to the United States circuit court is continued to October 8 next, the argument day (see files).

Now, Nov'r 9, 1874, petition of defendants under act of Congress of 1867 for removal of above case to the United States district court for the western district of Pennsylvania, filed. Same day affidavit and bond filed (see files).

Now, Nov'r 16, 1874, by opinion of Hon. E. L. Dana, A. L. J., filed, application for removal to the United States court refused (see opinion). (See C. M.)

Certified copy of order to stay proceedings on part of pl'ff returned with service accepted August 24, 1874, by G. R. Bedford, master.

6 Same day, defendants file præcipe for a certified copy of all the pleadings and proceedings in this case, to be filed in the United States circuit court for the western district of Pennsylvania, at Pittsburg (see files).

Docket entries in the U. S. circuit court, W. D. of P'a.

1874, December 5.—Certified copy of the record in this case from the court of common pleas of Luzerne County, State of Pennsylvania, received and filed.

1874, Dec. 19.—On motion of counsel for respondents, rule granted on plaintiff to show cause why a master should not be appointed in this case on part of plaintiff and respondents, returnable January 9, 1875, at 10 a. m.

1874, Dec. 21.—Copy rule to show cause mailed to John Handley.

1874, Dec. 29.—Above rule to show cause served personally and by copy upon A Ricketts, esq., counsel for plaintiff.

1875, January 23.—The rule to show cause in this case came on to be heard, and was argued by W. S. Purviance, esq., in support of rule, and contra by A. Ricketts, esq. C. A. V.

And now, to wit, January 23, the rule to show cause why a master should not be appointed in the above case withdrawn, and rule to show

cause why the above case should not be remanded to the common pleas court of Luzerne County, Pennsylvania, entered.

8 And now, February 27, 1875, the rule to show why the above case should not be remanded, &c., having been argued by counsel and fully considered by the court, the following order was made: "Motion allowed and cause remanded to the court of common pleas of Luzerne County, Pennsylvania. Per curiam."

1875, March 13.—On motion of W. S. Purviance, esq., order granted opening and vacating the order in the above cause of February 25, 1875, and reinstating the rule to show cause why the record in the above case should not be remanded to the common pleas court of Luzerne County, P'a, the reargument on the same to take place March 20, 1875.

1875, March 15.—Copy of the above order mailed to A. Ricketts, esq., Willebarre, Luzerne county, P'a.

1875, March 20.—The reargument on the rule to show cause why the record in the above case should not be remanded the common pleas court of Luzerne County, P'a, came on to be heard, and after argument by W. S. Purviance, esq., counsel for respondents, the same was made absolute and the above cause ordered to be remanded to the common pleas court of Luzerne County, P'a. Same day copy order mailed to A. Ricketts, esq.

1875, May 11.—Appeal to the U. S. Supreme Court allowed, and bond on appeal, with James Jifkins and John Howell as sureties, with certificate of U. S. com'r as to liability of sureties, approved and filed.

9 1876, September 9.—New appeal to the Supreme Court of the United States allowed.

10 *Pleadings and proofs in the C. of C. P. of Luzerne County.*

In the court of common pleas for the county of Luzerne, State of Pennsylvania, sitting in equity.

BETWEEN ADDISON SWEETZER, PLAINTIFF,
and
JAMES JIFKINS, JAMES JIFKINS, JR., AND Thomas Jifkins, defendants.

To the honorable the judges of said court:

Your orator, a resident of the city of Scranton, in said county, complains and says:

1. That your orator being seized and possessed of a certain piece of land situate in what is now the eight' ward of the city of Scranton aforesaid, bounded northea'terly by an alley, southeasterly by Penn avenue, southwesterly by Lackawanna avenue, and northwesterly by lands of F. I. Painter, being fifty feet in front on Lackawanna avenue and ninety feet in depth therefrom, containing altogether four thousand five hundred square feet of land, on which there is erected a certain build-

11 ing known as Washington Hall; and having occasion to borrow the sum of eighteen thousand dollars, and being willing to pledge the said land as security for the repayment thereof, he, on or about the second day of February, A. D. 1863, effected the following arrangement, to wit: Twelve thousand dollars of the required sum he obtained from a certain William Dodge, of the city of New York, and the balance from the said defendants, his brothers-in-law, and in order to effect the transfer of the property so that it would be a clear and unencumbered security to both parties, he arranged that there should be a sheriff's sale

of said property to a certain Joseph H. Scranton, through whom the loan from the said Dodge was negotiated; that the said Scranton should then transfer the title thus acquired to the said defendants, taking from them a bond and mortgage for the said sum of twelve thousand dollars, with the lien restricted to the said property, and assigning the same to the said Dodge as his security; and for the security of these defendants they were to have the possession of the premises of the term of five years, and to receive the rents and profits thereof, and apply the same in repayment, first, of the moneys expended in carrying out this arrangement; next, of the indebtedness incurred to themselves; and finally, of the said money obtained from said Dodge; and at the
12 end of five years from their taking possession they were to account to the plaintiffs for all sums thus received by them and to reconvey the property to the plaintiff upon his paying any amount of the said indebtedness that might then remain over and above the amount received as rents and profits from the said property, and also allowing the defendants a reasonable compensation for their services.

2. That the said arrangement as to the loan and transferring the property as security were fully carried out and perfected, and the defendants put into possession, on or about the second day of March, 1863, the said Joseph H. Scranton purchasing the property at sheriff's sale for the nominal sum of fifty dollars, all other persons being prevented bidding by the representations made at the time, by the counsel for all parties, that the sale was simply made in pursuance of and to carry out the above-mentioned arrangement.

3. That at the end of the five years aforesaid the plaintiff called upon these defendants for an account and settlement and a reconveyance of the property as agreed upon, he being the' ready and prepared
13 to pay any remaining indebtedness that there might be and to comply in all respects with the terms of his agreement with them. He has ever since been and still is ready so to do.

4. That the defendants wholly refused to comply with the terms of their agreement aforesaid and to render an account or make any settlement with the plaintiff, and to make a reconveyance of the property to him.

5. That it was part of the agreement that the defendants should execute a paper and deliver the same to the plaintiffs, showing the nature of the transaction in writing, and this part of the agreement they also refused to comply with after obtaining possession of the premises.

6. That the value of the above-mentioned property is about thirty-five thousand dollars.

Prayers.

That the plaintiff prays as follows:

1. That an account may be taken of all rents and profits received by the said defendants, or by any person or persons on their behalf, or which, without their willful neglect and default might have been
14 received by them since they entered into possession of *of* said premises, and that in taking such accounts such rents may be made *or* shall appear to be reasonable and just.

2. That the plaintiff may be permitted to redeem the said premises upon payment of what, if anything, shall appear to be due to the said defendants, and that they may be compelled thereupon to reconvey the same to him, or to such person as he shall direct, free from all incumbrances, made by them or either of them, or any person claiming under

them, or either or them, and may deliver over to him all deeds and writings in their custody or power, or that of either of them, relating to the said mortgaged premises.

3. That the plaintiff may have such further and other relief as the nature of the case may require.

4. That the defendants may answer the premises, and that due process may be awarded against them.

A. RICKETTS,
W. G. WARD,
A. T. McCLINTOCK,
Counsel for Pl'ff.

We hereby certify that in our opinion this case is of such a
15 nature that no adequate remedy can be obtained at law.

A. RICKETTS,
W. G. WARD,
A. T. McCLINTOCK,
Counsel for Pl'ff.

16 *Answer.*

In the common pleas court for the county of Luzerne, State of Pennsylvania, sitting in equity.

BETWEEN ADDISON SWEETSER, PLAINTIFF,
and
JAMES JIFKINS, JAMES JIFKINS, J'R, AND Thomas Jifkins, defendants.
} No. 3, August term, 1868.

To the honorable the judges of said court:

The answer of James Jifkins, j'r, one of the defendants above-named. This defendant now and at all times hereafter saving and reserving unto himself all benefit of advantage of exceptions to the many errors, uncertainties, and other imperfections in said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised, is or are material for him to make answer unto, this defendant answering says:

First. That the complainant was seized of the certain piece of land, with the building thereon, situate in the city of Scranton, as set forth in said bill of complaint.

Second. That the complainant did not borrow the sum of eighteen thousand dollars—twelve thousand dollars thereof of one William E. Dodge, and the balance from the defendants, nor any other
17 sum in the manner and for the purpose in the first section of the complainant's bill set forth, nor to the best of this respondents knowledge, information, and belief did the said Joseph H. Scranton, or any other person in behalf of said complainant, negotiate any loan, or arrange for a transfer of the title to the said premises by a sheriff's sale in the manner and for the purpose set forth in the first section of complainants bill; nor did this respondent, with his codefendants, or either of them, take possession of said premises under any arrangement made with or in behalf of said complainant to receive the rent and profit thereof for account of said complainant, or to account to the said complainant in any behalf for the same, or to reconvey the same to the complainant upon any terms whatever as set forth in complainant's bill.

Third. That no arrangement as to the loan, and transferring the said

premises as security were carried out and perfected, nor were the defendants put into possession of the same under any arrangement as set forth in complainant's bill.

The said Joseph H. Scranton did purchase the property at sheriff's sale, on or about the second day of March, A. D. 1863, for the sum of fifty dollars, but to the best of this respondent's knowledge, inform-
18 ation, and belief no persons were prevented from bidding thereon by reason of any representations made by said Scranton, or this respondent, or his codefendants, or either of them, or the counsel of either of them ; that respondent is informed and believes that the said sheriff's sale was not had, nor was the purchase by said Scranton made in pursuance of or subject to any arrangement or agreement whatever made with or in behalf of said complainant. At the time of the sheriff's sale aforesaid, there were liens by judgments, mortgages, and mechanic's liens, of record in the proper office of Luzerne County, amounting to more than eighteen thousand dollars, several thousand dollars of which were owned or represented by the said Scranton, and addition thereto, there was an indebtedness—not of record—of several thousand dollars due from complainant to the defendants, and that the liens aforesaid far exceeded in amount the then market value of said premises, all of which said liens have since been paid in full, provided for by the said Scranton and these defendants out of their own proper funds, as the respondent is informed and believes.

The said Scranton became the purchaser of said premises at the said sheriff's sale without any agreement or arrangement whatever,
19 made with or in behalf of said complainant, as set forth in complainant's bill.

Fourth. Sometime since said complainant did call upon the defendants, or some of them, and demanded some sort of settlement, but this respondent having no settlement to make, or account to render, or any reconveyance of said property to make to said complainant in the behalf in said complainant's bill set , did refuse to comply with his demand. This respondent is not informed, and does not believe that the complain't has been and is now ready and prepared to pay any indebtedness due from him to the defendants, or any of them.

Fifth. This defendant did not solely or with his codefendants make any agreement whatever that he or they should execute and deliver to the said complainant any paper showing the nature of any agreement whatever, such as is alleged in complainant's bill, either before or after obtaining possession of the said premises.

Sixth. That on or about the second day of March, 1863, this respondent with his codefendants did go into possession of the said
20 premises as purchaser bona fide of the same from said Scranton, for a valuable consideration, to wit, the sum of eighteen thousand dollars, which said sum together with a large additional sum was applied to the discharge and payment of liens against said premises, and other indebtedness of said complainant; that as purchaser of said premises from the said Scranton, this respondent and his codefendants had no notice of any arrangement or agreement made by said Scranton with or in behalf of the said complainant of the tenor and effect set forth in complainant's bill, or by which the said Scranton or your respondent and his codefendants became liable in fact, or in law, to account in any manner for the rents and profits thereof, or to make any reconveyance of the same to said complainants.

Seventh. The said property at the time of said sheriff's sale was worth

about fifteen thousand dollars. The market value at this time does not exceed twenty-five to thirty thousand dollars.

Eighth. Pleads the statute of frauds.

All of which matters and things this respondent is ready and
21 willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JAMES JIFKINS, J'R.

LUZERNE COUNTY, *ss:*

James Jifkins, j'r, one of the defendants, being duly sworn, saith that the facts set forth in the foregoing answer, so far as set forth to be of his own knowledge, are true; and so far as set forth on information and belief, he believes them to be true.

Sworn & subscribed to before me this sixth day of August, A. D. 1868.

L. S. WATERN.

(The same answer was filed by the other defendants, severally.)

Amendment.

Now, August 8, 1868, by leave of court, the plea contained in eight section of defendant's answer is amended as follows, to wit:

Eighth. That this defendant is advised and believes that if any verbal agreement had been made between the complainant and defendants, such is alleged in first and second sections of complainant's bill, the same would be void under the provisions of an act of assembly of this
22 commonwealth, entitled "An act for the prevention of frauds and perjuries," approved the 21st day of March, A. D. 1772, and the defendant claims the same benefit of the said statute in this his answer as if the same had been and was properly placed herein.

23 *Plaintiff's testimony.*

Depositions of witnesses produced, sworn, and examined before me, as examiner in the above case, pursuant to the attached order of court, at my office in the city of Scranton, on February second, 1869. The plaintiff was represented by A. Ricketts and W. G. Ward, esqrs., who were present with the plaintiff. The defendants appeared by John Handley, esq., their counsel; also by H. W. Hoyt, esq.

Memorandums of certain judgments, mortgages, and mechanic's liens against Addison Sweetzer were offered in evidence by the plaintiff, also certain conveyances, when it was agreed by and between the parties that all deeds, mortgages, mechanic's liens, and judgments relating to the Washington Hall property and pertaining to the matter in controversy be considered in evidence.

E. N. WILLIARD,
Examiner.

S. A. HALSTEAD, being duly sworn, says:

I reside in Carbondale. I am thirty-five years of age. I resided in Scranton in January and February, 1869. I was engaged with my brother in the boot and shoe trade. I occupied a store in the Washington Hall building, the property now in dispute. We rented

24 the store of Addison Sweetser. I heard conversation about the building between Thomas Jifkins and Addison Sweetser. This was in the latter part of January or first of February, 1863. M'r Jifkins proposed that there should be a transfer of the property from Sweetser to Jifkins. I understood that this was to be done to save the property for Sweetser from the liens against it. There was a loan of money to be made on bond and mortgage against the property. The purpose of the loan was to make part payment of the liens against the property. The Jifkins were then to collect the rents for a term of years, I think five years, and those rents were to still make payments of the debts against the property, and they were to hold the building in trust for that term of years, and expend the moneys collected for the payment of the debts and the necessary repairs on the building, and to keep account of all such moneys collected and expended on the property. At the end of this term of years Sweetser was to settle with Jifkins and pay them for their trouble, and to pay up all indebtedness against the property that remained. Then the property was to be reconveyed to Sweetser. Afterwards I understood from conversation between Jifkins and Sweetser that they had entered into that arrangement. Subsequently the property in question was sold at sheriff's sale, and I understood
25 from the first conversation that the transfer should be made in that way. I remember that the sheriff's sale was subsequent to the first conversation. I cannot say how long. After the sheriff's sale I heard several conversations between the same parties in which the arrangement was recognized. Some of them were in my store and some of them near my store door at the foot of the stairs leading to the hall. There was no change in the furniture of the hall after the sale to my knowledge. I did not stay there long, but sold out in March or April of the same year. I understood that Addison Sweetser and Thomas Jifkins were brothers-in-law at that time. James Jifkins, James Jifkins, j'r, and Thomas Jifkins, composed the firm of James Jifkins & Sons.

Cross-examined by H. M. Hoyt, esq.:

I cannot say precisely when we went into possession of the store. It was when the store was first finished. I went out either in March or April, 1863. The conversations were all with Thomas Jifkins and Addison Sweetser. We occupied the whole of the store near the entrance to the hall on Penn avenue.

S. A. HALSTEAD.

Sworn & subscribed before me February 2, 1869.
E. N. WILIARD,
Examiner.

26 R. C. MOORE, being duly sworn, says.

I reside in Scranton. Have resided in Scranton seventeen years. I am forty-six years of age. I am a brick-maker. I worked for Addison Sweetser for ten years immediately preceding the spring of 1864. In December, 1862, M'r Thomas Jifkins aske' me whether I thought Sweetser would be able to keep the building or not—I mean the Washington Hall, the property in dispute. I told him I did not know. He asked me if I did not think it would be a good idea for him to put it out of his hands. I told him I did not know. He then asked me to ask Sweetser to put it into his hands. He said if Sweetser would do so he would take hold and assist him all he could to save the building. This was all of the first conversation. I told Sweetser this conver-

sation. Sweetser said he would see him. On the day *the day* the building was sold at sheriff's sale, when M'r Thomas Jifkins came back from Wilkesbarre, M'r Sweetser and I met Thomas Jifkins on the corner of the street by the building. He then took us into the hallway of the building and told M'r Sweetser what he had done that day. He said he encour*g*aged people not to bid on the building, and by doing so said he had saved M'r Sweetser a good many hundred dollars in sheriff's
27 costs. I think he said the sheriffs would claim five per cent. There was other conversation, but I do not remember what it was.

Cross-examined:

I have conversed with Sweetser about this matter frequently. I cannot say how often. During the conversation betwen Thomas Jifkins and Sweetser, neither James Jifkins nor James Jifkins, j'r, were present. I am the brother-in-law of Addison Sweetser.

Direct resumed:

Question (by M'r Ricketts). State who compose the firm of James Jifkins & Sons in the city of Scranton.

(Objected to by defendants' attorney as irrelevant.)

Answer. James Jifkins, James Jifkins, j'r, and Thomas Jifkins; they have been doing business as such firm ever since I have been here; that is seventeen years. Their business is and has been butchering during that time. I have been very well acquainted with them for several years. Thomas Jifkins was also the brother-in-law of Addison Sweetser as well as myself. My wife is a sister of Addison Sweetser.

R. C. MOORE.

Sworn and subscribed before me Febr'y 4, 1869.

E. N. WILLIARD,
Examiner.

28 EDWIN B. COLBY, being duly sworn, says.

I am the nephew of Addison Sweetser and also of Thomas Jifkins. I am twenty-four years of age. I reside in the city of Scranton. I came here in 1864. I had a conversation with Thomas Jifkins about the property in dispute about the first of February or last of January, 1864. We were on the way up to Susquehanna County, Thomas Jifkins and myself, to purchase cattle. He told me that himself, his father, and his brother James had taken the Washington Hall property in trust, to keep for M'r Sweetser for a term of five years. At the expiration of the five years, M'r Sweetser was to pay the indebtedness on the building and pay them for their trouble, and go into possession of the building. He said they had a book in which they kept an account of the receipts and expenditures of the building. He said what money remained after paying the expenses of the building and interest on the moneys that the building was owing, the remainder was to go to pay the debts on the building. He said that M'r's Sweetser used to go and swee*t* the hall and arrange the seats. That is all of the conversation that I remember at that time. About two years after he spoke to me about it. He said that M'r Sweetser had found fault with them for pay-
29 ing so high rate of interest on some loan. He said that Sweetser ought not to find fault with them, for they had nothing to do about the rate of interest, for it was M'r Sweetser's doings; he had agreed upon it himself. He said Sweetser told him he could get the money now at a less rate per cent. At the first conversation Jifkins told me

there was a loan on the building which had been obtained from a man in New York.

Cross-examined:

The conversation commenced by his beginning to tell about this property. He was speaking about the Washington Hall building. He said himself & his father and brother had taken it in trust for M'r Sweetser. He used the word trust. I cannot say how many times I have talked with Sweetser about this building; not very frequently. I told this conversation to Sweetser immediately after the Jifkins folks refused to settle with him some time last spring. I have spoken about this conversation several times with Sweetser. He asked me if I knew anything about the building. On Monday or Tuesday last I first told this conversation to M'r Ricketts. Have never told it to M'r Ward. Thomas Jifkins said it was for a term of five years. Thomas Jifkins said
30 it as I have before given it. There may have been a word or two different, but I have given the substance of the conversation. It was some four years ago, and it is impossible for to give it word for word. Thomas Jifkins also stated that they had a book in which they kept an account of the receipts and expenditures of the building, and what moneys remained of the receipts after paying the expenditures of the building and the interest of the money against the building. The remainder was to go towards paying the debts of the building. At the expiration of five years M'r Sweetser was to pay what remaining debt there was and M'r Jifkins' folks for their trouble, and he was to come into possession of the building again. He spoke about a loan of money on the building, that the money was procured from a man in New York. I have given in this cross-examination all of the conversation as near as I can remember. There was considerable more, but I have forgotten it. I have had no sort of difficulty with Thomas Jifkins. I first made the acquaintance of M'r Thomas Jifkins some time in January, 1864. I was not in his employ; did not go to work for him. This conversation was shortly after I became acquainted with Thomas Jifkins.

31 Question. Shortly after you came here he told you all about this private arrangement?

Answer. He did not say it was a private arrangement. I have talked with Thomas Jifkins hours and days about his different business matters.

Question. Has Mr. Sweetser or have any of his attorneys shown you a copy of his bill in equity in this case?

Answer. I don't know. I had a copy of Sweetser allegations against Jifkins, and think I have it now in my valise. Mr. Sweetser handed me this book, and it is the only one I have had; I never read the book but once; I don't know whether the word "trust," "five-year term," and "surrender it up and redeem the property at the end of five years" were in that book, but think they were. There was no such statement as I have made in the book I read.

Question. Have you ever had any conversation with any of Mr. Sweetser's relatives in Scranton or Hyde Park or anywhere around here in reference to this law suit?

(Objected to for obvious reasons.)

Answer. I have; so many have spoken to me about it, that I cannot remember them all. I have spoken with Jacob Collins, of Hyde Park; Daniel Brown, of Scranton; Wilson Moore, of Hyde Park; Geo.
32 T. Barber, Benjamin Sweetser, C. W. Thompson, James Roach,

Addison Sweetser, Mather. I don't remember having spoken to R. C. Moore. I held this conversation with these parties at different times; these conversations took place some before and some after I got this book that I speak of; the other parties generally spoke to me first; they generally commenced the conversation by saying: "I heard Jitkins' folks were going to try to keep that building from Sweetser;" I generally replied that I believed they were; that is not all I said; I cannot say that I have said to those parties what I was going to swear to; I have said to these parties what I knew about the case; don't know that I told them that I would swear to it, for I did not know that I would be called upon to swear to it.

Question. After you were subpœnaed in this case did you tell any one what you would swear to?

Answer. I told them what I could swear to. I told Benton Sweetser, I told Mr. Ricketts what I knew about it, but I don't think he asked me if I would swear to it. I do not think I ever told Mr. Sweetser, the plaintiff, what I could swear to; he was present when Mr. Ricketts
33 asked me what I knew about it; previously Addison Sweetser asked me what I knew about the case, and I told him.

Direct resumed:

Mr. Thomas Jifkins said that Sweetser complained about the rate of interest that they were paying on the loan upon the building. He said Sweetser ought not to complain; it was not their doings; it was his own.

Witness having produced a printed copy of the answer of James Jifkins, which is by me marked "A" and hereto attached, says: That is the paper which I referred to in my answer when I said I had seen the allegation of Addison Sweetser and the answer of Jifkins thereto; it is the only one that I have ever had. Witness being shown the printed copy of the bill filed in this case, says: I have never seen this before.

E. B. COLBY.

Sworn and subscribed before me Feb'y 4th, 1869.

E. N. WILLIARD,
Examiner.

34 BENTON SWEETSER, being duly sworn, says:

I am the brother of Addison Sweetser; I have lived in Hyde Park fifteen years; I am thirty-two years of age; I am a butcher; I have worked for Jifkins & Sons; the firm of James Jifkins and Sons is composed of James Jifkins, James Jifkins, j'r, and Thomas Jifkins; they have been doing business here for fifteen years as James Jifkins & Sons; I commenced working for them November, 1862, and worked till August, 1864; I have had conversation with them about this Washington Hall property; it was in the spring of 1863; my conversation was with Thomas Jifkins only; he said they had taken the building; by they, I mean James Jifkins & Sons; he said they had taken the building for a term of five years, and to hold for M'r Sweetser, and that his brother James was keeping a book, in which he was keeping an account of the building, of the rents received, and all the expenditures. At the end of the five years they were to make a settlement; during this time if Addison Sweetser could pay in any money to pay of' the claims on the building he was to do so; at the end of five years they were to make a settlement, and if there was anything remaining to be paid on the claims against the buildings Sweetser was to pay it, and he was to have the building back and pay the Jifkins for their tronble. The conversation was on the hill this

side of Clark's Summit; the conversation commenced there; I don't know where it ended; were riding in a buggy; we were going to Auburn Centre, in Susquehanna County, to buy cattle; it was a long story, and I have told all I can remember; I don't pretend to tell all the conversation, but give the substance of it; I don't remember of any other conversation; he might have spoken about it.

Cross-examined:

The conversation was, I think, in April, 1863.

BENTON SWEETSER.

Sworn and subscribed February 4th, 1869, before me.

E. N. WILLIARD,
Examiner.

BENTON SWEETSER recalled by plaintiff:

The furniture of the hall which was in the hall before the sheriff's sale remains there; I have frequently seen it there since, when I have been there to light the hall. When Jifkins first took possession of the hall, M'r's Sweetser, the wife of Addison Sweetser, and Addison Sweetser's servant girl, used to clean out the hall; I think she continued to do this for several months; I think she did it as long as I worked for Jifkins; I don't know how much longer she did after I left Jifkins. I know nothing about the awning.

Cross-examined:

I was in the employ of Jifkins, and received pay for my services; I do not know whether M'r's Sweetser and her servant girl were in the employ of Jifkins or not. I don't know that M'r's Sweetser ever came to the meat market of Jifkins to get her pay in meat; I never saw her there for meat.

BENTON SWEETSER.

Sworn and subscribed before me February 4th, 1869.

E. N. WILLIARD,
Examiner.

THOMAS HETZELL, being duly sworn, says:

I reside in Scranton; have resided here for fifteen years; am thirty-two years of age; I am in the livery business and have been for five or six years; I have been well acquainted with Thomas and James Jifkins, j'r, for twelve years; I have talked with Thomas Jifkins about the Washington Hall property two or three times; the conversations were all in 1865 or 1864. Thomas Jifkins said he and his brother had taken it for a term of years; he said they had taken it for either three or five years; won't be positive, but think it was five years; Thomas complained a great deal for having to there so much nights to take care of the hall; I don't know of anything further; he might have said considerable; I don't remember just the words; I asked him if they had bought the property; he said they had taken it for a term of years to help the old man Sweetser. He said the rent of the hall was paying pretty well, but it was troublesome to attend to it.

Question. State what answer he made to your question whether he had bought the property for himself.

Answer. He said he had not bought the property, but had taken it for a term of years. He said the rents were paying very well; he said the rents were to apply on the debts against the property, and he said the old man Sweetser would come out all right.

THOMAS HETZELL.

Sworn and subscribed before me, February 4th, 1869.

E. N. WILLIARD,
Examiner.

RICHARD FITZGERALD, being duly sworn, says:

I live in the city of Scranton; have lived here about twelve years; I am forty-one years of age; I am acquainted with all the parties in this suit; I had a conversation with James Jifkins, j'r, about the Washington Hall property, or a portion of it. In the spring of 1866 I called on M'r Sweetser to rent the basement saloon in Washington Hall for a friend of mine. M'r Sweetser told me as long as I recommended him he would let him have it, provided the man who was then occupying it should move out. As I was leaving M'r Sweetser he called me back, and told me in the mean time, and told me through courtesy I should speak to M'r Jifkins about it, "as you know my matters are in his hands for a while longer." I next called on James Jifkins, j'r, and asked him if he would let my friend have the saloon, and I recommended him in the same manner as I did to M'r Sweetser. He told me to
38 see M'r Sweetser about it, as the matter was only in hands in trust for M'r Sweetser, or something to that effect, and if Sweetser was willing my friend should have the saloon, provided the other tenant went. My next conversation with M'r James Jifkins, j'r, was in the summer of 1866. It was in relation to building a gateway between Washington Hall and the City Hotel, occupied by myself. He agreed to pay for one-half of the gateway. At the same time I was laying sidewalk in front of the City Hotel, and I laid the sidewalk in front of the alley between Washington Hall and the City Hotel, one-half of which belonged to the hall property. M'r Jifkins grumbled at the bill; said it was too large and refused to pay for the sidewalk in front of the hall part of the alley, and said he had paid more than he would like now for the concern for the length of time he was to have it. He said he was to have it but about two years more, and then when Sweetser got it he might put down what he was amind to, mentioning some kind of expensive wood. That is all I remember that he said. He paid one-half the bill for the gateway, but did not pay for the pavement.

Cross-examined:

I can't tell what month it was nor the day; it was in the spring of 1866. I never thought I would be called upon to swear to it. I went to see Jifkins and Sweetser about *they*. I spoke to Jifkins in front of the City Hotel and the Washington Hall. He had the meat
39 wagon with him. There was no one with him nor no one standing with me when I spoke to him. He was driving around into the alleyway. This was the first time I ever spoke to Jifkins about the property. It was the first time I remember having any transaction with him about the property. I am sure it was in the spring of 1866. I was connected with a transaction for renting a room for an Irish club from Jifkins. I do not know when it was. I cannot say whether I rented it of Eliza Walsh. I think Eliza Walsh sent me to M'r Jifkins. I cannot swear positively; I have a poor memory. I cannot remember dates unless I make a memorandum of them. I settled with M'r Jifkins for the room and charged it over to Eliza Walsh in his account. I settled the rents for the club room with James Jifkin when we settled for the gateway.

Question. You got mad at M'r Jifkins at this settlement and told him he wouldn't be able to hold the property long anyhow.

Answer. I did not. I had no dispute with M'r Jifkins. My language was cool and gentlemanly. His toward me was unbecoming a Scranton butcher to an ex-army officer. I told this conversation with Jifkins first to M'r Sweetser, I think. I told it to Stephen Bennett; I told it to Thomas Hammond, the carpenter; I have told it to several
40 others. What I said to them was that I would collect the sidewalk bill from Jifkins if I did not think it would ultimately come out of Sweetser.

(Defendants objects to the last answer of witness, not being claimed as cross-examination and not responsive to any question put by defendants, and being simply the witnesse's legal opinion and no portion of the conversation with Jifkins.

Plaintiff objects to the objection of defendants in so far as it is not correct in saying that the language of witness is not responsive to a question of theirs. If they do not like the answer they should not ask the question.)

I cannot say how often I have conversed with Addison Sweetser about this matter; 1 only remember twice. I think Addison Sweetser has shown me a printed pamphlet about this matter. (Defendants produce copy of plaintiff's bill. Examined by witness.)

I cannot swear that this is the same pamphlet, but the fore part of it or leaving looks like the one he showed me. (Defendants' answer shown witness.)

I cannot swear which one Sweetser showed to me. I did not read it over except the heading; it was on the sidewalk he showed it to me. I don't remember any remarks Sweetser made to me at the time; no more than that he said he had sued Jifkins for his property. He wanted
41 to settle up according to the contract he had made. In my direct examination I have told everything that I remember James Jifkins, j'r, said to me. I don't remember anything more that Sweetser said to me except as to the rascality of Jifkins in trying to cheat him out of his property. In Washington Hall he shed tears when he first told me about it. I don't think I made any reply when I heard him say this. I have no recollection of ever having made any reply during these conversations with Sweetser. When I settled the gateway bill with James Jifkins, j'r, he did not throw off any rent for the club-room that I remember. I threw off the portion of my bill which was disputed by him and for which I had no verbal order. James Jifkins, j'r, may have made a deduction from the rent, as I told him we were stuck for it.

Direct resumed:

All that I have stated in my cross-examination is in answer to questions put to me by defendants' counsel.

Question. When you say you would have sued Jifkins for the bill had you not known that it would have come out of Sweetser ultimately, state from whence you got that knowledge. (Defendants object to the above question. 1st. Such knowledge or opinion could only be the result of some fact proved or to be proved; if the fact is in the
42 knowledge of the witness, the fact should first be proved. The witnesses opinion would not in any event be evidence.)

Answer. I got that knowledge from M'r Sweetser and James Jifkins, j'r, on those occasions mentioned in my previous answers.

Cross-examined:

I call this my knowledge because it was what they told me both of them.

RICHARD FITZGERALD.

Sworn and subscribed before me February 5th, 1869.

E. N. WILLIARD,
Examiner.

HENRY WARD, being duly sworn, says:

I reside in Scranton; I have lived here in Scranton about twenty-nine years; I am thirty-five years of age; I am a carpenter by trade; I did some work on the Washington Hall property in 1863 or 1864, I do not recollect the year; to the best of my knowledge it was in 1864; at the time I was foreman of the carpentering of the Lackawanna Iron & Coal Company, and they were doing this work; we had been doing more or less work at different times for James Jifkins & Sons. In their meat market when they were all present, James Jifkins, James Jifkins, j'r, and Thomas Jifkins, they asked me where I got the lumber
43 to do that work with on the hall, or where I was going to get it; and they told me to keep a separate account of that from their individual matters. They said they would have to settle that with M'r Sweetser. I kept a separate account of the work and rendered my account that way to the Iron & Coal Company. The time was kept as work done on the Washington Hall.

Cross-examined:

M'r Mannes hired me. The Iron & Coal Company pays me at the end of the month. M'r Mannes sometimes takes jobs outside of the Iron & Coal Company. I do not know whether this was one of them jobs or not. I know I was sent there to do the work by Mannes; the work was building a stage and cutting a window-frame in back. The building of the stage was in Washington Hall. The stage is permanent. M'r Sweetser never gave me directions what to do there. I don't remember of having seen any of Jifkins in the room. None of them superintended or had anything to do about the work that I know of. I can't tell what day, week, nor month it was when I had the conversation with Jifkins in the meat market, but think it was in 1864. I kept an account of any work from day to day in a book. That book was a time-book, a monthly time-book, and is divided into days and weeks. I had the conversation the day before I commenced the work. The time-book was burned up when our shop was burned. I think it was in the morning that
44 I had the conversation. The way I know that was I went there to get the key to get in the hall. Jifkins keep a large butcher shop in Scranton and I presume do a large business. I don't know whether there was a large number of customers in their shop at the time or not. I was in a hurry and came away as soon as I could get the key. I can't tell who I asked the key from. I think Thomas Jifkins gave me the key, but will not be positive. I can't tell where I stood in the stall when I asked for the key. Don't know that the old man Jifkins came up to speak to me when I went for the key. Don't know that any of them spoke to me but the man who handed me the key. The one who handed me the key was the one who told me how to keep the account. Neither James Jifkins nor James Jifkins, j'r, said anything to me about how to keep the account, that I remember of. The one that handed me the key did the talking. Jifkins' store is thirty-five or forty feet deep

by twenty-five feet front. Don't think that I walked back to the desk where they do their writing. I know I went into the building. I think it was in cold weather, but can't tell what time of year. The place where they do their writing is in the rear part of the building. The place where they sell meat is in the front and centre of the room. James Jifkins, s'r, is an old man with gray hair. Don't know that he is hard
45 of hearing. Don't know where he generally sits. I have seen him sit at the desk and have seen him all over the shop. Don't know who paid for this work.

Direct resumed:

M'r Manness is the superintendent of the wood department of the Lackawanna Iron and Coal Company. I rendered my account to M'r Mames for the company.

HENRY WARD.

Subscribed and sworn February 5th, 1869, before me.

E. N. WILLIARD,
Examiner.

JOHN P. WALSH, being duly sworn, says:

I am about thirty-five years of age. I reside*n* in Scranton. Have resided in Scranty twenty-one years and over. I was a member of the common council of the city of Scranton in 1867; was one of committee of common council on streets and bridges in that year. In the month of May, 1867, on Saturday, the water broke into the basement of Washington Hall from the street. John Casterline, who was living in the basement at that time, came down to my house on Saturday afternoon. I was in bed sick. He persuaded me to come up and see the state of things in the basement of Washington Hall. I got out of bed and came down along with him and saw it. On Monday morning I went up to the butcher shop of James Jifkins & Sons. I told them they should go to work and repair that sidewalk. The three were all present;
46 James Jifkins, James Jifkins, j'r, and Thomas Jifkins, all in the shop. James Jifkins, j'r, told me they were not going to do any more repairing on said property; that they only held it for collateral security for the term of five years, at that, the term was very nearly expired. I asked who I would go to see about it. James Jifkins, j'r, told me to go and see Addison Sweetser about it. I looked after Sweetser and tried to find him. When I couldn't find him, Addison Sweetser, I went to work and fixed the sidewalk myself, patched it up with a few boards. The boards belonged to myself, at least the plank. I charged it to the city.

Cross-examined:

It was in the month of May, 1867, that I had this conversation. It was on Monday morning. It was on the Monday following the Sunday when the water broke in. I am positive it was on Monday morning. John Casterline occupied the part of the hall where the water broke in. Don't know where he now resides. No one else complained to me on Tuesday of the same week. I give them notice that I did this work on the sidewalk. I took the lumber out of my own yard with which I did the repairing. I can't tell where I purchased the lumber. They were all plank. Can't tell how many plank it took. There were but two or three holes. I spiked the plank down. I had the spikes of my own. I do not remember any one who came up to me
47 and spoke to me while I was putting the plank down. I

don't remember any one who saw me doing this work. In making my bill to the city I mixed this work with other work that I had done for the city. I do not know on what Monday I had this conversation, but am sure it was in the month of May, 1867. It was early in the morning that I went to the shop. It was after seven o'clock. I don't know whether any one else was in the store except the three Jifkins. They were the gentlemen that I was after, and I had business with them, and I did not recognize any one else. I walked right up to the desk and spoke to them. They were all standing at the desk. James Jifkins, j'r, then said, "Go and see Sweetser about it." This he said in the presence of the other two. The other two said nothing, and I walked out then. On the next morning *On the next morning* I went and repaired it. I can't recollect when I first told Sweetser what I am now swearing to. It was after the lawsuit commenced. Told it to no one else that I know of *of*. Have never told it to any of Sweetser's lawyers. Sweetser has never shown me a copy of his bill in equity and the answer in book form. Jifkins and I never had any dispute except about my teamster leaving out their cattle, and then we had no dispute. He spoke to me about it and I told him my boy had left it down.
48 Sweetser has never asked me what I would swear to and I have never told him.

JOHN T. WALSH.

Sworn and subscribed this 5th February, 1869, before me.

E. N. WILLIARD,
Examiner.

B. F. FREEMAN, being duly sworn, says:

I am twenty-seven years of age. I reside in Scranton. Have resided there nine years. I am a member of the Baptist church of Scranton. 1862, 1863, and 1864 the Baptist church congregation worshipped in Washington Hall. There was no change in the furniture of the hall during the year 1863. There was no change made while the congregation worshipped there. There were some trifling additions made during the year 1863. I saw M'r's Addison Sweetser there scrubbing the hall and down the steps. She had a servant girl with her.

B. F. FILLMORE.

Sworn and subscribed before me, February 5, 1869.

E. N. WILLIARD,
Examiner.

49 NATHANIEL HALSTEAD, being duly sworn, says:

I am forty-five years of age. I reside in Scranton; have so resided for about fourteen years. I am a member of the Baptist church in this place. The Baptist congregation worshipped in Washington Hall some three or four years. I am not positive now. We worshipped there in 1862, 1863, and 1864. There was no change in the furniture during the year 1863. We had the same furniture during all that time that we worshipped there. M'r's Sweetser swept and washed the hall during the first year after Jifkins collected the rent. She had other women with her when she washed the hall.

Cross-examined:

I am a carpenter by trade and keep a stone quarry.

Question. Have you made any improvement for M'r Jifkins on this hall?

(Objected by plaintiff's attorney on the ground that it is not cross-examination, but evidence in chief for the defendants.)

I have no recollection of having made any.

Question. Did you furnish the stone around this hall?

(Objected by plaintiff's attorney on the ground that it is not cross-examination, but evidence in chief for defendants.)

50 Ans. I did, and Jifkins paid me for them.

N. HALSTEAD.

Sworn and subscribed before me, February 5, 1869.

E. N. WILLIARD,
Examiner.

Now, March 16th, pursuant to notice, parties appear.

J. H. GUNSTER, being duly sworn, says:

I made the furniture for Washington Hall in February or March, 1861. I am a cabinet maker. I made some settees and one or two stands, the furniture was principally settees; I made ninety of them. They were either three and one-half or four and half dollars apiece; I don't remember exactly. I made them for Addison Sweetser, and he paid me for them. I think the same settees are in the hall yet.

J. H. GUNSTER.

Sworn and subscribed before me, March 16, 1869.

E. N. WILLIARD,
Examiner.

JOHN FELLOWS, being duly sworn, says:

I reside in Scranton. One year ago, the third or fourth of March, 1868, M'r Sweetser called upon me to go with him and Thomas Hammond to see M'r Jifkins. Sweetser inquired for the M'r James Jifkins, the old gentleman. The man who was attending said he did not
51 know where he was; Sweetser wished him to go in and see if he could not find him. He would not go. Finally, Sweetser went in himself and found Thomas Jifkins. Thomas came out. M'r Sweetser wished him to go in and have the old man come out. The house and shop are under the same roof. The old gentleman came out, and when he came into the room he said, "M'r Sweetser, what do want of me?" M'r Sweetser told him he had come to get a settlement. The old gentleman said he had no settlement to make; said he had nothing to do with the matter, nor wouldn't have, and left the room. Sweetser kept talking to him but he left the room without saying anything more. We then come away.

JOHN FELLOWS.

Sworn and subscribed before me, 16th March, 1869.

E. N. WILLIARD,
Examiner.

DANIEL HOWELL, being duly sworn, says:

I reside in Scranton.

Question. State what arrangement was made with you by Addison Sweetser (if any) in regard to furnishing him money for the redemption of the property known as Washington Hall, and when it was.

(Defendants object to the question as irrelevant, incompetent, &c.)

About the middle of February, 1868, M'r Sweet'er came to me
52 and wanted to borrow between *between* ten and twelve thousand dollars. He said the five years were up in which to redeem the

Washington Hall. I told him I had ten thousand on hand that I would let him have, and in a month or two I would furnish the other two thousand. I kept it for him from the middle of February till the seventh of March.

(Defendants object to the testimony as irrelevant, impertinent, and incompetent.)

DANIEL HOWELL.

Sworn and subscribed before me, March 6, 1869.

E. N. WILLIARD,
Examiner.

DANIEL B. OAKES, being duly sworn, says:

I reside in Scranton. I am in the flour and grocery business. I am acquainted with the Washington Hall property. Saw it when it was being built. It was worth in 1863 twenty-five thousand dollars, when completed. Property has risen greatly in value since that time in in Scranton, and judging according to the value of other property on Lackawanna avenue it is now worth forty thousand dollars.

Cross-examined:

I do not know how much it measures on Lackawanna avenue. I think it is about fifty feet; can't say what the depth is; can't say how much land was worth a foot on Lackawanna avenue in 1863.

D. B. OAKES.

53 Sworn and subscribed before me, March 16, 1869.

E. N. WILLIARD,
Examiner.

JAMES SHOPLAND, being duly sworn, says:

I am a carpenter. I reside in Scranton. Have resided in Scranton over ten years. I am acquainted with the Washington Hall property. Saw it when it was being built. In 1863 when completed it was worth over twenty thousand dollars, I think. It is now worth twenty-five thousand dollars as it stands. It is somewhat out of repair.

Cross-examined:

I do not know exactly what it would have cost to build such a building in 1863; probably fifteen or sixteen thousand dollars. Can't say what land was then worth on Lackawanna avenue per foot. I know this was considered a very valuable lot, but can't say exactly what it was worth.

JAMES SHOPLAND.

Sworn and subscribed before me, March 16, 1869.

E. N. WILLIARD,
Examiner.

R. S. BENJAMIN, being duly sworn, says:

I live in Scranton. I am a builder; am acquainted with property in Scranton. I am somewhat acquainted with the Washington Hall property. In 1863 the property was probably worth from sixteen to twenty thou-
sand dollars. I can't say much about it for it was the first year I
54 moved here. It is now worth, judging from the way property is now ruling, from thirty to thirty-five thousand dollars. In 1863 the building would probably have cost fifteen or sixteen thousand dollars. I

was not particularly posted as to the price of material then. I had not built any bricks then except one on Lackawanna avenue. The lot was worth about four thousand dollars; I mean the two lots on which the hall is built. The lots on which the hall now stands would now sell for twelve or thirteen thousand dollars; they might sell for more and they might sell for less. It would cost, in my opinion, to build the building now, from twenty to twenty-five thousand dollars.

Cross-examined:

I am not aware that any part of the lots have been cut off since the hall was built. If fifty feet of the rear end of these lots fronting on Penn avenue were sold off in sixty-three the value would be five hundred dollars less. Fifty feet on Penn avenue by fifty feet deep at the present time would be worth at the present time from fifteen hundred to two thousand dollars.

R. S. BENJAMIN.

Sworn & subscribed before me, March 16, 1869.

E. N. WILLIARD,
Examiner.

55 JOHN R. KEELEY, being duly sworn, says:

I have lived in Scranton and Hyde Park eighteen years. I am a carpenter and builder. I am acquainted with the Washington Hall building; saw it every two or three days during its building. In 1863 I should say the building was worth twenty thousand dollars; I mean the building by itself. On Lackawanna avenue, corner lots were worth fifteen hundred dollars, and the others were worth one thousand dollars, as the Lackawanna Coal and Iron Company originally sold them. These two lots were taken up among the first. I have been familiar with the buying and selling of lots on the Lackawanna avenue for some years. Have engaged in the business myself. In my judgment, the lots on which Washington Hall now stands, if the buildings were off, would bring twenty thousand dollars. I have been through the building several times; was in it yesterday; it is in a very dilapidated condition; the walls give evidence that the rain comes through the roof. It would cost nearly thirty thousand dollars to put up the building now as it was originally put up. The building and lots just as they are, at a fair market value, are worth fifty thousand dollars.

J. R. KEELEY.

Cross-examined:

56 Question. What would that property have sold for in 1863 at a judicial sale?

Answer. Not over twelve or fifteen thousand dollars. My reason is that everybody was hard up, and at that time money was scarce and hard to raise.

Direct resumed:

If money had been easy at that time it would have brought more.

J. R. KEELEY.

Sworn and subscribed before me, March 16, 1869.

E. N. WILLIAMS,
Examiner.

E. W. CARLTON, being duly sworn, says:

I reside in Hyde Park; have so resided for ten years past. On the second of March, 1868, I went with M'r Sweetser to M'r Jifkins' place of business. M'r Sweetser told Thomas and James Jifkins, j'r, that that day the five years were up. He demanded a settlement, and was ready to pay them all his indebtedness, and wanted a reconveyance of the Washington Hall property according to agreement. James Jifkins, j'r, told him he had no arrangement to make with him any further than if he had thirty-five thousand dollars he could have the property. I think that was the answer, to the best of my recollection. Thomas Jifkins told him he would have nothing to do with him.

E. W. CARLTON.

Sworn and subscribed before me, March 16, 1869.

E. N. WILLIARD,
Examiner.

57 NATH'IEL HALSTEAD being recalled by plaintiff:

I am familiar with the Washington Hall property; we occupied it at the time it was sold by the sheriff; it was then worth, in my opinion, thirty-five thousand dollars. I am a carpenter and builder. If it was in good repair now it would be worth forty thousand dollars; it is out of repair: roof is leaking very bad, and it is injuring it very much. The building contains two saloons in the basement, three stores on the first floor. There are six or seven rooms on the second floor, used some of them for offices, and some for tailor shop. The hall is on the third floor, in a shocking condition; it has been suffering for want of care for several years; it is getting worse every day.

NATHANIEL HALSTEAD.

Sworn and subscribed before me, March 16, 1869.

E. N. WILLIARD,
Examiner.

JOHN ZEIDLER, being duly sworn, says:

I reside in Scranton; have resided in Scranton since 1834. I am acquainted with buildings; have built and rented buildings in Scranton. I am now renting stores, offices, and saloons. I am acquainted with the Washington Hall property, and have been ever since it was built. The corner saloon in the basement should rent for five hundred dollars
58 per annum, as the rent of property has been for the last two years. The other saloon under M'r Goodman's store would be worth about four hundred dollars per year. The other saloon fronting Penn avenue is worth three hundred dollars per year. The corner store, occupied by Sutts, is worth fifteen hundred dollars a year. I don't know what they pay. I judge from the way I rent my own buildings. The other store fronting Lackawanna, occupied by Goodman, is worth about twelve hundred dollars. The other store fronting Penn avenue is worth one thousand dollars a year. The offices on the secon' floor—that is, the whole second floor—should rent for twelve hundred dollars a year. The hall on the third floor is worth twenty-two hundred dollars per year. In speaking of the rents throughout, I judge from the way I rent my own property. My stores, but a short distance from the hall, are only twelve feet six inches wide by sixty feet deep. I rent for twelve hundred dollars per year.

JOHN ZEIDLER.

Sworn & subscribed before me March 17, 1869.

E. N. WILLIARD,
Examiner.

59 ALFRED HAND, being duly sworn, says:

I reside in Scranton; have resided in Scranton about nine years. I am familiar with the renting of property in Scranton; am agent for the renting of property, and have property of my own. I am a lawyer. I knew Washington Hall property. The corner store occupied by Sutto ought to rent for fifteen hundred dollars per year. The store occupied by Goodman on Lackawanna avenue ought to rent for twelve hundred dollars. The store on Penn avenue ought to rent for eleven hundred dollars a year. The second floor, containing the offices, ought to rent for thousand to twelve hundred dollars a year. I don't know anything about the renting of the hall; it is occupied nearly every night. The building is in one of the best locations in the city. Lackawanna and Penn avenues are the busiest streets of the city.

ALFRED HAND.

Sworn and subscribed before me March 17, 1869.

E. N. WILLIARD.

60 CYRUS WISE, being duly sworn, says:

I am assessor of the city of Scranton, The Washington Hall property is assessed at thirty-five thousand dollars, and has been for the last two years.

CYRUS WISE.

Sworn and subscribed before me March 17, 1869.

E. N. WILLIARD,
Examiner.

DAVID R. RANDALL, being duly sworn, says:

In February, 1863, I was present at the sheriff's sale of the Washington Hall property. The property was sold to Joseph H. Scranton. I am a lawyer. I do not remember that I represented any claims against the property. I had a conversation at the time the bidding was going on with Thomas Jifkins. I think it was one of the Jifkins'. I cannot give the exact conversation, but I have a distinct recollection of the substance of what was said. He inquired of me why I was bidding upon the property. I told him I considered it a very valuable property; was well acquainted with it. I used him a cant phrase, and told him I thought there was a nigger in the fence. He replied to me that the property was going to be bid off for the benefit of M'r Sweetser; didn't want I should be pitching in there. I think I told him I had no
61 interest in the matter at all; represented no claims, and didn't care anything about it. I understood from him that he was the friend of M'r Sweetser there. He gave no details of the manner in which the thing was to be operated at all, I think. I have given the substance of all he said to me. This conversation occur'ed in the sheriff's sale-room while the sale was going on, but between us privately, and not publicly. I can't say that I had any conversation with M'r Sherred, who represents the writ; I may have had. Don't know that Sherred represented the writ. I think that there was more than one Jifkins there. Can't say whether the old gentleman was there or not. I mean to say that the Jifkins' were there taking an interest in the sale, and I knew that they were on intimate terms prior to that time with Sweetser. I don't know that the representation of Jifkins had any effect upon my bidding. I did not intend to run the property very high. It sold for more than I would give for it at any rate. What I mean is, that it was going to be sold for more than enough to pay all the liens

and indebtedness against Sweetser, which I understood to be about twenty thousand dollars; this I understood from Jifkins. I don't know what the property was struck down for. Can't say that it was
62 struck down to Joseph H. Scranton for fifty dollars. I paid no attention to it. I had no definite in my mind that I would bid for it. I knew it was a valuable property. I would have given more than fifty dollars for it. There was more than fifty dollars bid on it at one time; that was my impression. I think I bid more than that myself. My bidding brought Thomas Jifkins to me.

D. R. RANDALL.

Sworn and subscribed before me March 17, 1869.

E. N. WILLIARD,
Examiner.

Adjourned until June 30th, 1869, at 10 a. m.

June 30th, 1869, 10 a. m., parties appear, and by their attorneys, A. Ricketts for plaintiff, and H. M. Hoyt for defendants.

EDWARD MERRIFIED, a witness produced by plaintiff, being duly sworn, says:

I was present at the sheriff's sale of the Washington Hall property in February, 1863. I represented a claim of about eighteen hundred dollars against M'r Sweetser. It was not a judgment. I went there to bid on the property for the purpose of securing my claim if possible. I was induced not to bid by M'r Sherrerd and Thomas Jifkins on the ground that the property was being sold for the benefit of M'r Sweetser; that the claim would be paid as soon as Sweetser got in shape. M'r
63 Sherrerd and Jifkins both called me out one side. M'r Sherrerd did the talking and Jifkins stood by and assented to it. The reason I have given for not making a bid was that they told me as before stated. I did not bid upon the property. I think that the claim that I then represented has not been paid I am very sure of that. The claim was in favor of my father.

Question (by M'r Ricketts). State whether Sweetser has any other property out of which to collect the claim except Washington Hall?

(Objected to by Col. Hoyt as irrelevant.)

Answer. I have never been able to find any.

Cross-examined:

The sheriff sale was in February, 1863; I don't recollect whether it was the first or second sale day. It was the only day that I ever attended the sale. I was instructed to bid twenty thousand dollars for the property.

Direct resumed:

The day that I attended the sale was the day on which the property was sold. I am a lawyer by profession and reside in Scranton.

E. MERRIFIELD.

Sworn and subscribed before me June 30th, 1869.

E. N. WILLIARD,
Examiner.

64 C. H. DOWD, being duly sworn, says:

I have resided in Scranton since 1853; have been in partnership in the tin and hardware business with my brother since that time. We are now doing business as C. H. & W. L. Dowd. In 1863 our firm

had a judgment against Addison Sweetser. We had but one judgment. In 1863 we assigned that judgment to Joseph H. Scranton; I do not remember the exact date; it was about the time the loan was made.

Question (by M'r Ricketts). State what you mean by the loan?

Answer. I mean the loan made by M'r Scranton to pay off the claims against the Sweetser property. M'r Scranton did not pay us any money at the time the assignment of our judgment was made to him.

Question. Upon what consideration did you make the assignment?

Answer. The assurance of M'r Scranton that it would be paid in a short time.

Question. State what representation M'r Scranton made as to the arrangements with Sweetser at the time of the assignment.

(Objected to on the ground that what M'r Scranton may have said is not evidence.)

65 Answer. Scranton said: this is the only way we can do it; which I understood to mean to pay off the claims and to save Jifkins from loss.

(M'r Hoyt objects to any understanding that the witness had as not evidence.)

M'r Scranton said there was an understanding that Sweetser should have five years in which to redeem the property, but he will never do it.

Question (by M'r Ricketts). State upon what grounds you understood that the Jifkins' were liable to suffer loss as mentioned above by you?

(Objected to by the defendants because his understanding is not by actual personal knowledge, and therefore not in evidence this case.)

Answer. On account of endorsing Sweetser's paper. I did not see the paper, but it was well understood and I never heard it disputed.

Cross-examined:

At the time I had the conversation with M'r Sweetser the Jifkins were not present. I am the brother-in-law of Joseph H. Scranton.

C. H. DOWD.

Sworn and subscribed before me, 20th March, 1869.

E. N. WILLIARD,
Examiner.

66 RICHARD ANTHONY, being duly sworn, says:

I rented a saloon under Washington Hall in September, 1863. I was talking with James Jifkin's, j'r, about renting the saloon, and wanted him to give me a lease, and he told me he couldn't do that because he didn't know how long he should hold it, as he only held it to pay a debt.

RICHARD ANTHONY.

Sworn and subscribed before me, June 30, 1869.

E. N. WILLIARD,
Examiner.

ELWYN COLBY recalled:

I have seen Thomas Jifkins write frequently. I am familiar with his hand writing. (Witness, shown paper marked C and attached hereto, says:) This is in the handwriting of James Jifkins.

The said paper is in the words and figures as follows, to wit:

SCRANTON, *January 25th*, 1868.

M'r SWEETSER,

DEAR SIR: On my return home from Buffalo Valley my wife informed me that you intended to settle with me about the building. I don't see

for my part what you want to settle with me when you made all the arrangements with M'r Joseph Scranton and my brother James when I was from home. So I decline having anything to do with it,
67 only any arrangements you can make with the above parties I shall be perfectly satisfied. Further than that I shall have nothing to do with the matter.

Yours truly,

THOMAS JIFKINS.

Subscribed and sworn June 30th, 1869.

E. N. WILLIARD,
Examiner.

JAMES WOOLSEY, being duly sworn, says:

I made an awning for M'r Sweetser for the Washington Hall, June 9th, 1863. M'r Addison Sweetser requested me to make it, and he paid me for it thirty-eight dollars and thirteen cents. I am a carpenter. I was present and went with M'r Sweetser on the 2nd of March, 1868, to see M'r Jifkins, j'r. We found him at his market-house on Lackawanna avenue. M'r Sweetser demanded of James Jifkins, j'r, a settlement and offered to pay the Jifkins all he owed them, debt and interest, and told him he wanted to resume possession as agreed of the Washington Hall property. M'r James Jifkins replied, he had no settlement to make, except the settlement he had before offered. We then went and saw Thomas Jifkins, the same day. Sweetser made the same demand of him. Thomas replied that he had nothing to do with M'r Sweetser.

JAMES WOOLSEY.

Cross-examined:

68 M'r Sweetser offered no money to either of the Jifkins on this occasion. I saw no money; that is what I mean.

JAMES WOOLSEY.

Sworn and subscribed before me June 30th, 1869.

E. N. WILLIARD, *Examiner.*

JOHN ZEIDLER recalled:

I have resided in Scranton for fifteen or sixteen years. In 1864 the rent of the Washington Hall property would be worth from four thousand five hundred to five thousand dollars per annum. In 1865 it was worth fifteen hundred dollars, and every year since such property has increased in rental value in about the same proportion.

JOHN ZEIDLER.

Sworn and subscribed before me June 30th, 1869.

E. N. WILLIARD, *Examiner.*

Plaintiff here offers subpœna mark' " D " and the return of service on the back of same in evidence.

(Objected to on the ground—I. That the plaintiff's attorney, A. Ricketts, esq., states no purpose in offering the paper in evidence. II. That the paper is not evidence; that it is irrelevant and incompetent, and defendants object to having it attached to these depositions.)

69 JAMES JIFKINS, to true answer make, says:

(Exhibit D being shown witness.) This paper was served on me this noon.

Question (by M'r Ricketts). Have you brought with you the books and papers as required to do in this paper?

(M'r Handley instructs witness not to answer questions till instructed by his attorney.)

Defendant, by M'r Handley, objects to the questions as leading and because the question does not designate the books named in Exhibit D, and because it is not shown that the books in question and named in the subpœna have not been shown by plaintiff to be in existence or in the possession of the witness.)

Answer. I have no books to bring and have brought none with me.

Question (by M'r Ricketts). Where are the books, papers, and documents mentioned in this subpœna marked "D"?

(Defendants object to the question as leading, irrelevant, and the plaintiff has failed to show the existence of any such books named.

M'r Ricketts objects to the counsel of the defendants, under pretext of objecting to the question, telling the witness how to answer. The objection applies to this and the preceding questions.)

I have no books and don't know where they are.

70 Question (by M'r Ricketts). State whether you, or any of your firm, have at any time kept an account of receipts from the Washington Hall property, and of the application of the moneys received therefrom.

(Defendants object to the question as leading, and that James Jifkins is only entitled to speak for himself and not for the acts or doings of other parties.)

Answer. I have not kept any such account and do not know that any of the firm have done so.

Question by Ricketts. State whether you have any knowledge in any way of an account of the receipts and disbursements of the Washington Hall property being kept by any one since the said property came into the hands of James Jifkins & Sons.

(Defendants object to the question as leading, irrelevant, and not in evidence in the cause, if answered in the affirmative.)

Answer. No, sir.

ADDISON SWEETSER, being duly sworn, says:

In the last of December, 1862, or the forepart of January, 1863, Robert C. Moore came to me and said Thomas Jifkins sent him to me

71 to ask me to put the Washington Hall property into their hands, that is in the hands of the Jifkins to hold for me. I was like to have trouble on my matters. He said they would help me out all right. He said that Jifkins told him he did not like to speak to me himself. They were liable on endorsements for me to the amount of about three thousand dollars at that time. I can't tell exactly what the amount of Jifkins' liability was. I told Moore that I would see Thomas Jifkins. Before I saw Jifkins I went and consulted M'r Joseph H. Scranton about the matter. I asked M'r Scranton what he thought I had better do. He said he thought I had better put the property into some responsible person's hands for a while and get a loan on the property. He mentioned himself and M'r Jifkins as suitable persons to hold it. He mentioned at the time that he was holding Watts Cookes' property under much such an arrangement. He thought there would be no danger in letting the thing go that way. As I went home I called in and saw Thomas Jifkins. I found him working in the cellar. Thomas Jifkins and I were brothers-in-law. My wife is now dead. I told Thomas Jifkins the conversation I had had with M'r Scranton. He said, "Don't you trust it in M'r Scranton's hands." "If you do you will never get it again, but put it in our hands and we'll help you out all right." I con-

cluded to do that. We made an arrangement. We were to get
72 a loan on the property for five years. They were to hold it; Jifkins' were to hold it; keep a book; all the accounts relating to the building were to be kept in the book. They were to make all necessary repairs; rent the property to the best advantage. They were to consult me in making repairs and renting the property. They were to give me a writing to show this transaction or agreement. I was to leave the furniture and fixtures in the hall, as part of the agreement, which I did. I was to pay them a fair compensation for their trouble, and at the end of five years were to make a settlement. I should then pay up any indebtedness which might remain, and they were to reconvey the property to me. The rents were to be applied to pay themselves all they were holding for me, and all outside indebtedness, and then reduce the loan as much as possible; and the interest on the loan was to be paid quarterly. I think the loan itself was to be the last thing paid. The settlement at the end of five years was to be made by the books they were to keep. Thomas Jifkins said, "If it is not convenient for you to pay the money at the end of five years, we will help you raise it again." After this I went and consulted M'r Scranton about the loan; I asked him if he knew where I could get a loan of twelve
73 thousand dollars. He told me John Brisbin might have it. I went directly from Scranton's office to Brisbin's office, at the depot of the Delaware, Lackawanna, and Western R. R., of which road he was superintendent. I told him that M'r Scranton sent me to him to see if he had the money to loan on the Washington Hall property. He said he had not at that time. I went back to M'r Scranton's office and told him what he said. M'r Scranton said he was going to New York soon and he would see what he could do there. He went to New York and when he came back I went and asked him if he could get the money there. He said he could, but would have to pay ten per cent. interest for it. I told him I thought it was a big rate of interest to pay. I concluded to do it and told him to make the loan. I think it was the same time there was bonds on the property drawing ten per cent. interest. These bonds were the same debts that we were going to pay with that loan. These bonds had been on interest about two years. M'r Scranton said he thought if the holders of the bonds could have their money they would throw off the extra interest. He said he represented the iron company's claim, and he would do it for one. This was the largest claim and he would see the rest of them, and he thought they would do it. I saw him afterward and he said they all consented except John Sulphin, and I had better go see him myself.
74 I went and saw M'r Sulphin; he said if it was going to benefit Joseph Scranton Jifkins he shculdn't do it. I told him it was an arrangement by which the Jifkins' were to hold the property for a time. If he would do it, it would benefit me; he agreed to do it. About this time I was in M'r Scranton's office; we were talking about this loan of money, and M'r Scranton spoke to M'r Sherrerd about security—about securing the loan on the building. M'r Sherrerd says it should go through a sheriff's sale for the purpose of making it the first claim on the property. He said nobody would put that amount on a property except it was the first claim on it. I objected to a sheriff's sale, but Sherrerd said it was only for the purpose of clearing the property for that loan, and it would be hard getting it without. It was there and then agreed that it should be sold at sheriff's sale. We all three, M'r Scranton, M'r Sherrerd, and myself, went up to Jifkins' market, and called M'r James Jifkins, j'r, in, and told M'r James Jifkins, j'r, the

arrangement about the sheriff's sale; the sheriff's sale had never been talked of before, and James Jifkins, j'r, was well satisfied with the arrangement; he seemed to comply with everything about it. He made no objection to the arrangement made by Scranton, Sherrerd,
75 and myself.

Question (by M'r Ricketts.) State whether James Jifkins, j'r, had been present at any of the conversations in reference to the transfer of the property to them previous to this time.

Answer. I think he had; but the sheriff's sale had not been talked of before. I understood that the object of the sheriff's sale was to clear the property for that loan, and for no other purpose that I ever heard of. It was arranged there that Joseph Scranton should buy the property at sheriff's sale and deed it to the Jifkins'.

Question (by M'r Ricketts.) What was the necessity of such a roundabout way?

Answer. I never could understand exactly; it was Sherrerd's plan to have it done in that way. M'r Scranton seemed to think it was not necessary, and Jifkins never asked for it. Thomas Jifkins told me that Sherrerd arranged the sale and bid off the property for M'r Scranton. Thomas Jifkins also told me that he wouldn't take M'r Sherrerd's word that Scranton would make him a deed of the property—he made him execute a bond that he would deed him the property before he left Wilkesbarre. He also told me that M'r Randall and M'r Merrifield were there to bid on the property, and by telling them it was
76 sold under an arrangement it saved me quite an amount of sheriff's fees. This conversation with Thomas Jifkins was the same day as the sale. I met him on his way home from the depot. Shortly after the sale, after the deed had been delivered, M'r Scranton to Jifkins, I went to James Jifkins, j'r, and Thomas Jifkins, who were together, and demanded the writing that they had agreed to give me. They said our counsel, M'r Sherrerd, advises not to give you a writing, but we will carry out the arrangement just as fully. This didn't fully satisfy me. I went to M'r Sherrerd to talk with him about it—to ask the reason why he advised them not to give me the writing. He said they had got their deed and he should give me no information.

(Defendants object to evidence of any conversation of M'r Sherrerd.)

We had some hard words. M'r Sherrerd ordered me out of his office, and I went, and we haven't been very good friends since. Thomas Jifkins told me after the deed was passed from Scranton to Jifkins, M'r Joseph H. Scranton, James Jifkins, j'r, and Thomas Jifkins came out of Sherrerd's office, and M'r Scranton says, "We have forgotten about that writing of Sweetser." They all went back to M'r Sherrerd's office and consulted M'r Sherrerd about the writing. He came to the
77 conclusion that they had better not give a writing. The writing that Thomas was talking about was the writing that they agreed to give me in the beginning. He was making excuses for not giving me the paper, and gave this as a reason. This writing was the agreement, as I understood it, to permit me to redeem the property in five years. About a year and a half after this transpired and money got to be plenty, I thought I could get the money for six per cent. interest. I told Thomas Jifkins to see if M'r Scranton, by paying him wouldn't take that loan of the property; I thought I could get it for six per cent.; that ten per cent. was a high rate of interest. Thomas said, "You must not blame us for that, it was a bargain of your own making." A short time after I saw Thomas again, and asked him if he had seen M'r Scranton; he said he had. He said that Scranton said that Sweet-

ser said that said that Sweetser must be a confounded fool to think that he would furnish a loan when paper dollar was worth as much as a gold dollar and then take it off when it was worth but sixty or seventy cents. In the latter part of 1865, or in January, 1866, I went to Scranton and asked him if Jifkins could hold the property from me if they chose. M'r Scranton said, "They hold it in trust for you; if I live they can't keep it if they try. I don't think they will try. I have no
78 idea they will give you any trouble about it, providing you are ready to pay at the end of the time." He said also Jifkins' were keeping a book; all transactions relating to that building were in that book. The time was out the second day of March, 1868, for which they were to hold the property. I went to them in January, 1868. I told Thomas Jifkins that I wanted to look over our account about the building and see how it stood, and see how much money I had got to raise to square up. This was in the front part of the shop. Thomas then went back and consulted with James. Thomas came back and said, We are busy with our own books the first of the month; come in about the middle and we will look it over with you. I went about the middle, saw James, and he said he hadn't time then. He said come about the first of February and he would be ready. I went about the first of February and saw James Jifkins, j'r. He said he was not ready. I told him I didn't think he ever intended to get ready. After this I saw Thomas; I told him we ought to be able to settle this matter without a lawsuit. He thought so too, and told me to come in the next Saturday. On that day, Saturday, James and Thomas and myself went into the house of Jifkins, as I supposed, to settle. When we got into the room I asked Thomas how are we going to proceed?
79 He said if you have got thirty-five thousand dollars you can have the property, and that is five thousand dollars less than we would sell it to any other man. I asked him if that was James' opinion and his father's, and he said it was. I told him I would go and employ counsel and contend for my rights. On the second day of March, 1868, I took two witnesses with me and went and demanded a settlement. I went to Thomas Jifkins and James Jifkins, j'r; I told them I was prepared to pay them debts, interest and costs, and for their trouble—I was prepared to pay the money. They refused to settle. The next day I went and demanded a settlement of the old gentlemen, James Jifkins. He refused to have anything to do with it; said he nevor had and never would have anything to do with it.

July 28th. According to notice served, A. Ricketts, esq., for plaintiff, and John Handley, esq., for defendants, appeared at my office in the city of Scranton.

ADDISON SWEETSER recalled:

My wife cleaned the hall. It was part of the arrangement that what we could do toward cleaning and the like should go toward
80 reducing the expenses. She kept the hall clean about one year, scrubbing and sweeping. Nearly a year after she commenced cleaning the hall, her sister, M'r's Thomas Jifkins, got sick, and she went to take care of her sister. She was there about five weeks. After that time the Jifkins' took the responsibility of cleaning, and did it after. My wife never returned to it again. She never asked nor received any pay for the care and cleaning of the hall from Jifkins'. My wife died in October, 1867.

(Witness shown letter of Thomas Jifkins marked "Exhibit C.")

After M'r James Jifkins disappointed me in settlement, I thought he

did not mean to settle, and I went to see Thomas Jifkins. He was not at home; I told his wife I wanted to see him about that property; that I didn't think they intended to give it up without some trouble. She said she would tell Thomas when he came home. I told her I would come and see him again about it. A few days after I received the letter, now in my hands, marked "Exhibit C." This letter is in the handwriting of Thomas Jifkins. I received the letter through the post-office.

ADDISON SWEETSER.

Sworn and subscribed before me, July 27th, 1869.

E. N. WILLIARD,
Examiner.

81 ALFRED HAND recalled:

Witness being shown writ heretofore put in evidence, Joseph W. Bock, assignor to D. R. Malven, vs. Addison Sweetser, No. 49, February term, 1863, issued upon No. 365, Nov'r term, 1862, say': I was the attorney and directed the writ to be issued, and was attorney for the plaintiff on the judgment upon which the writ was issued. Witness being shown assignment of the said judgment, dated February 10th, 1863, and filed March 3rd, 1863, says: This assignment is in my handwriting, and was made by me while the writ was out. I drew the assignment in my office. My office was then on the second floor of Naylert's bank building, in the front part, and M'r Sherrerd's office was on the same floor, in the back part. I took the assignment into M'r Sherrerd's office to get the money. M'r Sherrerd was there. One of the Jifkins' was there. I don't know which Jifkins; it was one of the young men; Joseph H. Scranton was there, and John Brisbin was there. After I had got my money and handed the assignment to M'r Sherrerd, M'r Jifkins said to M'r Scranton, I think M'r Sweetser wants us to give him a writing. I can't give the exact language, but the idea was that the paper should show that he had some interest in the property. M'r Scranton turned to M'r Brisbin and said, had they better give such a
82 paper? M'r Brisbin said I don't think they had better give such a paper, do you think they had, Hand? (addressing me.) I told him I thought not, and gave him my reasons, that if the Jifkins' wanted to sell the property it might trouble them in selling the property. And Brisbin then said, I don't think such a paper can be given; they addressed me as though I knew all about the transaction, but I knew nothing about it except what I had previously learned from M'r Sherrerd, when talking to him about the assignment of the Brock and Malven judgment. He then stated to me that an arrangement was being made for M'r Sweetser's satisfaction. This conversation took place while M'r Sherrerd and myself were walking from Wilkesbarre to Kingston. No one was present except M'r Sherrerd and myself. A fair rental for the Washington Hall property for the last four or five years would be, in 1863, twenty-three hundred and fifty dollars; in 1864, twenty-five hundred dollars; in 1865, twenty-eight hundred dollars; 1866, forty-three hundred dollars; in 1867, forty-eight hundred dollars. This is a low estimate. It is impossible for me to tell what the hall would rent for, and my knowledge of saloon property is very limited. I have included in my statement the hall and saloons, but I speak more especially
83 from my knowledge of stores and offices.

ALFRED HAND.

Subscribed and sworn before me, June 28th, 1869.

E. N. WILLIARD,
Examiner.

LUZERNE COUNTY, *ss:*

I, E. N. Williard, appointed by the court as examiner in the above-stated case, do certify that the witnesses above named were produced by the plaintiff and sworn by me, and their depositions were taken and reduced to writing by me on the days above stated at my office in the city of Scranton, in the presence of A. Ricketts, esq., attorney for the plaintiff, and Henry M. Hoyt, and John Handley, esq'rs, attorneys for defendants.

E. N. WILLIARD,
Examiner.

EXHIBIT A.

NOTE.—Exhibit A is simply the answer of the defendants as already printed at pages one to five of this appendix.

EXHIBIT C.

SCRANTON, *Jan'y 25th*, 1868.

M'r SWEETSER:

DEAR SIR: On my return home from Buffalo Valley my wife informed me that you wanted to talk with me about the building. I don't
84 see for my part what you want to talk with me, when you made all the arrangements with M'r Joseph Scranton and my brother James when I was away from home; so I decline having anything to do with it; only any arrangements which you can make with the above parties I shall be perfectly satisfied. Further than that I have nothing to do with the matter.

Yours, truly,

THOMAS JIFKINS.

EXHIBIT D.

In the court of common pleas of Luzerne County, sitting in equity. No. 3, A. T., 1868.

ADDISON SWEETSER
vs.
JAMES JIFKINS ET AL.

I hereby certify that the exhibit marked "D," and referred to in the testimony of the plaintiff in the foregoing cause, was a subpœna, with a clause of duces tecum, directed to the defendants, and requiring them to produce before me as examiner the account and accounts of the receipts and expenditures of the Washington Hall property while in their possession, and all books, papers, and documents relating to the same.

I further certify that I have made diligent search for the same in my office and have been unable to find it, the same having been lost in some way unknown to me.
85 March 7th, 1870.

E. N. WILLIARD,
Examiner.

86 DEFENDANT'S EVIDENCE.

SAMUEL SHERRERD, of Belvidere, New Jersey, a witness produced, sworn and examined on the part of defendants, deposeth and saith :

I know these plaintiffs and defendants; have known them as much as twelve years. In 1863 I resided in Scranton; was practicing law. I am somewhat familiar with the subject-matter in controversy in this case. I acted as attorney for M'r Scranton and M'r Jifkins at the time of the transfer of the Washington Hall property in the city of Scranton. In 1861, M'r Sweetser became embarrassed in building the hall. At that time I negotiated an arrangement with his creditors by which the title to the land was perfected and an extension of the time of payment of the credits made. This arrangement is shown by papers on record; deed Lack'a Iron & Coal Co. to E. J. Kirklin, date 14th Sept., 1861; deed E. J. Kirklin and wife to A. Sweetser, date Sept. 14, 1861; mortgage A. Sweetser to E. J. Kirklin, dated 14th Sept., 1861, in M. B. 15, p. 24; A. Sweetser to J. H. Scranton, M. B. 15, p. 26.

In the winter of 1862 and 1863, one or more of the installments of the extension had become due, and other debts were pressing M'r Sweetser. At that time M'r Sweetser attempted to negotiate a loan to be secured upon the premises, but failed to secure it. I had several conversations with him and with M'r Joseph Scranton on the subject. Subse-

87 quently to this, M'r Scranton applied to me personally with reference to a loan to be effected by the Mess'rs Jifkins, who proposed to take the property and secure it, not only by a lien upon that property, but upon other property which they held in Scranton. The loan proposed was for the amount of twelve thousand dollars, and the party from whom it was to be made would enter into the arrangement provided he would insure them that the investment would be perfectly safe. We came to the conclusion that the property itself together with a lien upon Jifkins' other property, with a policy on the building of Washington Hall would undoubtedly be safe, whereas the Washington property alone would not be safe entirely. I suggested then as a means of effecting a transfer that a sale should be made by the sheriff on the writ then in his hands, and on which the property was then advertised, to the best of my knowledge and belief. I am positive I suggested a sheriff's sale, but whether it was then advertised or not I am not certain. I suggested that M'r Scranton should become the purchaser at sheriff's sale, then convey the property to the Mess'rs Jifkins and take a mortgage from them for the amount of the loan as the purchase-money, thus making it undoubtedly the first loan upon the property. The Mess'rs Jifkins were at the time security for M'r Sweetser for a

88 large amount, so large that I thought it would be very apt to swamp them, in the then condition of affairs. The fact of the liability I knew not only from the Mess'rs Jif'kins but from M'r Sweetser himself. In carrying out this arrangement, the judgment on which the property was advertised was purchased, but to whom the assignment was made, whether to Scranton or Jifkins I am not certain, and about the time of the sheriff's sale the Mess'rs Jifkins purchased several other claims against Sweetser. The sale was made by the sheriff on the 21st day of February, 1863, purchased by Joseph H. Scranton for a small sum. The transfer was made to the Jifkins, a few days after and the proper securities executed for the loan. The deed for the property bearing date 3rd March, 1863, recorded in deed-book 95, page 98 and 6. Mortgage bear even date therewith, and judgments were entered on two or more bonds at or [illegible] the same time. I had several

conversation' with M'r Sweetser and M'r Scranton relative to the first negotiation spoken of above, namely, a loan to M'r Sweetser on the property, and considered the matter above done.

(M'r Ricketts, counsel for the plaintiff, objects to the statement of witness' opinion, and requests that he confine himself to the statement of facts.)

89 Were the negotiations which resulted in the sale, as conducted by you in pursuance of an arrangement by or on behalf of M'r Sweetser or not?

They were not. I was present at the sale, bid off the property. I have no recollection of having had any conversation with Edward Merrifield at or about the time of the sheriff's sale with regard to this sale being made for the benefit of *of* M'r Sweetser. I am certain from my recollection of the transaction that I never did make such assurance to M'r Merrifield, and particularly for this reason, that I was especially anxious to keep the title to the property entirely clear, so that it might not be involved by claims against M'r Sweetser. M'r Joseph Scranton was not present at the sheriff's sale. No representations were made by me at the time of the sale, that the sale was simply made in pursuance of and to carry out an arrangement made with or on behalf of Addison Sweetser in reference to this property. I have no distinct recollection of any conversation with M'r Hand with reference to the transfer of this property. If I said anything to him in regard to Sweetser's wishes in the matter, I had reference to securing Jifkins their liabilities on his behalf. M'r Sweetser had expressed to me such a desire. I was attorney for the Lackawan'a Iron and Coal Company at the time, and

90 as their attorney, was cognizant of their real estate transactions—the selling of their lots. I was also engaged in selling real estate for different parties. Real estate was at that time very much depressed in Scranton. I don't think the Washington Hall property could have been sold at that time for fifteen thousand dollars. The liens and Sweetser's debts with reference to that property which was purchased by the Jifkins at the time of the sale was more than that amount.

(M'r Ricketts objects to the counsel for defendants reading the testimony of the other side and then asking witness questions from that. There was no evidence read.)

My purpose in making the sheriff's sale was to remove all incumbrances upon the property and make the property loan as secure as possible to the lender. I think I told the parties that a sheriff's sale was not absolutely necessary, but that I recommended that it should be made. I had also in view the security of Jifkins from their liabilities. I had a dispute with M'r Sweetser before this transaction on a settlement with reference to a transaction with Joseph Low, who was a contractor for the building. I have no distinct recollection of ordering him out of the office, although I may have done so, as I considered

91 that he had abused me, not only before but after the sale. I have no recollection that I in company with M'r Scranton and M'r Sweetser called on Mess'rs Jifkins at their market there found James Jifkins, j'r, and explained to him the arrangement for sheriff's sale of the property.

Question. If you ever had gone, would you remember it?

Answer. I think I would.

Cross-examined by M'r Ricketts:

One or two of the Jifkins' were present at the sheriff's sale; I think it was Thomas. I know of no representations made by Thomas to bidders at the sheriff's sale. I do not of course know that he not make

any. I think the Washington Hall building cost about twenty thousand dollars, and he paid for the two lots two thousand and twenty-five dollars. There were large liens against the property; I think more than any one would pay for it cash. These liens were all owned or controlled by the Jifkins' or M'r Scranton. This is the explanation I give why it was sold for fifty dollars. The only management I know of to obtain the property for so low a price was securing the liens by M'r Scranton and M'r Jifkins. Some were assigned legally and for some a verbal
92 arrangement was made; the bid was made low to save sheriff's costs. I think certain judgments controlled by M'r Handley were bought on the day of sheriff's sale. The negotiations between Scranton and Sweetser for the loan continued at least a month or two, and may be three or four months before the sale. I think the first conversation occurred in the fall, probably September, 1862. The first *the first* negotiations for a loan were made between Scranton and Sweetser; at that time it was intended it should be made directly to Sweetser. I considered this negotiation afterwards abandoned, and the subsequent negotiations were made between Scranton and Jifkins. I had conversations both with Scranton and Sweetser about this matter of getting a loan, more with Sweetser with reference to the first transaction than with Scranton. I wouldn't be positive whether M'r Sweetser demanded from Jifkins a writing on the day of sale in reference to this transaction. I know the matter was spoken of by M'r Sweetser to me at some time, and I think more than once. I think on the day of sale M'r Jifkins—Thomas Jifkins—the one who was present at the sale, said to me that Sweetser wanted to have a writing. I told him there must be no writing made; the transaction must be clear; that if any writing were given it might lead to trouble, that they must be careful not to give
93 anything to give the creditors a hold on the property; that if there was any understanding between them it must be made a moral and not a legal one; that Sweetser would have to trust him in the matter; that he would do what was right. I think Sweetser subsequently came to me about a writing. I think M'r Thomas Jifkins subsequently said something to me about Sweetser not having done as he had agreed to do. I think I first suggested the sheriff's sale to all the parties.

Question. State whether you remember having made any statement to Henry Griffin during these transactions, that they were intended for Sweetser's benefit.

Answer. I have no recollection of having had any conversations with Henry Griffin on the subject, but am confident, for the reason stated in my examination-in-chief, that with regard to my conversation with Edward Merrifield, that M'r Griffin must have misunderstood me, if he considered that I so stated the matter.

Question. State whether you understood that M'r Sweetser expected that he had a right to redeem the property.

(H. M. Hoyt, counsel for defendants, objects to the question as being irrelevant and not a cross-examination.)

94 Answer. I know no further means of knowing but the fact of his asking for the paper.

S. SHERRERD.

Sworn and subscribed before me at Wilkesbarre, 21st October, 1869, at my office.

R. C. SHOEMAKER,
Examiner.

JOHN BRISBIN, of Newark, New Jersey, being produced, sworn, and examined on part of defendant, deposeth and saith:

In 1863 I was living in Scranton. I know these parties; I know the Washington Hall property; my recollection of the first interview I had with either of these parties is that M'r Sweetser called upon me to see if I or the company which I represented would him a loan upon this property; I understood from him that he was heavily involved and that unless he would make a loan he must lose the property. I do not definitely recollect what amount he stated his liabilities were, but I do recollect that I then thought they were more than the property was worth. I gave him no encouragement as to making or procuring a loan. Subsequently M'r Scranton came to me and stated that the Messrs. Jifkins were largely involved on account of Sweetser. Sweetser stated to me in that conversation to which I referred that he was indebted to the Jifkins, and that they had become his security also for a considerable amount.

95 M'r Scranton said at the time above referred to, that the Jifkins were so involved in this matter that unless they could make a loan they would be probably swamped, and asked me if I should recommend *with* him to some of our New York friends, mentioning M'r William E. Dodge in that connection, to make a loan upon the property for twelve thousand dollars. I told him that I considered that a full price for the property, but if the Jifkins would give a lien upon their other real estate as well, I would recommend it. Afterwards he informed me that M'r Dodge had consented to make the loan. I think—I am quite certain—that M'r Dodge asked me as to the sufficiency of the security. I therefore at different times had conversations with M'r Scranton and M'r Jifkins in reference to perfecting this matter of a loan for the Messrs. Jifkins. Before or about the time the matter was brought to a close, M'r Thomas Jifkins said to me that M'r Sweetser wanted some paper agreement or understanding in reference to his right to redeem this property. I told M'r Jifkins there must be nothing of the kind, that he must sign no paper, make no agreement of that kind whatsoever. He said he would not, and in M'r Sherrerd's office, I think it was, I repeated the same advice, adding that, having advised a loan, I could not consent to there being any contingency as to the title. So far as my information extended I did not regard or understand M'r Sweet-

96 ser as having any connection whatsoever in the matter of this case, but that it was made in order that the Jifkins might, as far as possible, save themselves from loss in consequenee of Sweetser's indebtedness to them and their liabilities for him. I do not know whether writs were out or not; my understanding from Sweetser was that debts were pressing; he must do something. As I have already said, I considered twelve thousand dollars a full price for the Washington Hall property then.

Cross-examined by M'r Ricketts:

I do not know what the building cost. My reason for repeating the advice in M'r Sherrerd's office was, that the matter was called up by some one. Have not been connected with real-estate transactions here in Scranton of late. My judgment as to the present value of that property would not be good for anything.

JOHN BRISBIN.

Sworn and subscribed before me, at the Wyoming House, in Scranton, 22nd October, 1869.

N. C. SHOEMAKER,
Examiner.

JOSEPH H. SCRANTON, of Scranton, Pennsylvania, being produced, sworn, and examined on the part of defendants, deposeth and saith:

I reside in Scranton; I know the parties and the property in dispute.

Some considerable time previous to the time when the loan was
97 obtained, M'r Sweetser applied to me to procure a loan for him.

I suggested the possibility of his obtaining a loan from eith' M'r John Brisbin, Gillespie, or Pierce, or M'r Swetland. He subsequently informed me that he was unable to effect a loan from either of those parties, and urged me to ascertain, in New York or elsewhere, whether or not a loan could be had. I told him that in the depressed condition of real estate in Scranton it would be difficult to get those New York gentlemen to make loans upon it, but that I would do anything in my power to promote his wishes and secure his interest. He made repeated application to me subsequently with regard to the loan, and had several conversations with M'r Samuel Sherrerd, at that time the attorney of our company, with regard to the title and security which this Washington Hall property would give, when I became satisfied that it would be inexpedient for me to undertake to negotiate a loan for twelve thousand dollars upon this property alone for five years (that was the time for which a loan was to be made), and the matter was virtually dropped. Still later M'r Thomas Jifkins came to me and stated that M'r Sweetser was in trouble with regard to his indebtedness, which were liens upon his property; and that, in addition to that, he

was indebted to them in account, besides very considerable lia-
98 bilities of theirs as endorsers upon his paper, and unless something could be done by which these judgments liens could be satisfied or arranged, they would be swamped; they—that is, Jifkins & Sons. I told him that I was tired of making efforts to borrow the twelve thousand dollars upon that property, but that if he and Sweetser would see Sherrerd and arrange so that the title would be secure—that is, on the Washington Hall property—and the Jifkins would give a judgment-bond which would cover their property, I would probably be able to make a loan. Still later, as I was informed, it was arranged that the property be sold at sheriff's sale, which, as I understand, was done. I was not there. It was bid off by M'r Sherrerd, in my name. Subsequently, Jifkins' judgment-bonds were given, and the loan to Jifkins was obtained. I considered the loan as having been made for and solely on account of Jifkins, who furnished the security. What agreement or understanding there may have been between Sweetser and Jifkins, if any, I know nothing about. I never agreed, so far as I am concerned, to make or execute any paper of the kind to Sweetser, or anybody else. The only part I took in this was as the mutual friend of both parties.

Question. Was or was not there any agreement or arrange-
99 ment made by you with or in behalf of Sweetser, by which you became liable to reconvey this property to Sweetser?

Answer. No, sir; there was no such arrangement.

(M'r Ricketts insists that the question just asked be put down.)

Question. In your negotiating this loan were you acting strictly on behalf of the Jifkins'?

Answer. I was, sir.

Question. Were you in any way, or not, acting in behalf of or in pursuance of any agreement with M'r Sweetser?

Answer. I was not.

Question. After you became the purchaser of this property at sheriff's sale, was there, or was there not, such an arrangement that the Jifkins' were bound to take it off your hands?

Answer. No, sir.

Question. Were, or were not, the Jifkins' bona fide purchasers, for a valuable consideration, from you of this property?

Answer. They were.

100 Question. Did you, or did you not, make any representations by which any persons might be prevented from bidding on this property at sheriff's sale?

Answer. I have no recollection of making any such representations. I have no recollection of ever having advised M'r Sweetser to place this property in the Jifkins' hands or my own, or any other person's, in trust, though I may have done so. I have no recollection of ever having told M'r Sweetser that I held Watt Cook's property in trust, although I may have done so. I have no recollection of having gone with Sweetser and Sherrerd to Jifkins' place of business.

Question. State whether you have any recollection of any interview between M'r Sherrerd, your attorney, and M'r Sweetser, at your office, relative to the securing of this loan and to the sale of Washington Hall property by the sheriff.

Answer. No, sir.

Question. State whether you executed a bond to M'r Sweetser, conditioned that if this property was purchased in your name at sheriff's sale, that you would reconvey it back to the Jifkins'.

Answer. I have no recollection of ever giving such a bond.

101 Question. State whether, at any time, that Mess'rs Jifkins, Joseph H. Scranton, and John Brisbin were coming out, or had come out, of M'r Sherrerd' office, that you remarked, "We have forgotten about that writing of Sweetser's."

Answer. I have no recollection, in the first place, of being at M'r Sherrerd's office with those gentlemen, and of course I have no recollection of making any such remarks.

(M'r Ricketts, counsel for plaintiff, objects to the counsel for defendants handing M'r Scranton plaintiff's bill of complaint while upon the stand; which, however, they do and request him to read.)

Question. State whether or not the Mess'rs Jifkins made any agreement with M'r Sweetser in reference to his redeeming this property.

Answer. I have no knowledge of any such agreement. My judgment is that in 1863, at a judicial sale, that Washington Hall property would not have brought exceeding twelve thousand dollars.

Cross-examined by M'r Ricketts:

So far as I know, the sheriff's sale was managed by M'r Sherrerd. M'r Sherrerd was acting as attorney for the Lackawanna Iron and Coal Company, who had a large loan upon the property.

Question. What was the special purpose of that sheriff's sale? Was it not specially to clear the property of incumbrances and to
102 make this loan of twelve thousand dollars the first loan upon the property?

Answer. As I understood it, the sheriff's sale was made in accordance with M'r Sherrerd's views of the necessity of the case in order that they might have a clear and perfect title. I do not remember the amount of my bid at the sheriff's sale. I wasn't there at all.

Question. Do you remember the amount of money you paid at the sale as purchase-money; you paid no purchase money at all, did you?

Answer. The purchase was made, and the purchase-money, whatever it was, paid by M'r Sherrerd. M'r Sherrerd attended to all the matters and arranged all the papers between Jifkins and myself.

Question. State, if you remember, what the consideration was in the deed from you to the Jifkins'.

Answer. My impressions are that it was eighteen thousand dollars.

Question. State how the sum of eighteen thousand dollars was fixed up. Was it not the sum of twelve thousand dollars with interest at ten per cent. per annum calculated for five years?

Answer. Such is my recollection.

Question. State whether that consideration of twelve thousand or eighteen thousand dollars was paid to you by the Jifkins'.

Answer. My judgment is that the payment to me must be con-
103 sidered as made by the Jifkins', the loan having been effected for their account.

Question. Was not this twelve thousand dollars, however, the loan obtained through from William C. Dodge?

Answer. I have no recollection of ever handling a dollar of money. It passed into M'r Sherrerd's, and he made the settlement, acting for me.

Question. Was not this twelve thousand dollars the identical money received from William E. Dodge?

Answer. So far as I know.

Question. State what was done with the money. What did Sherrerd do with it?

Answer. So far as I know—my belief is it was applied to the liens of the iron company and other liens, which I had assumed and had agreed to pay discharge against Addison Sweetser.

Question. State whether you have any knowledge of the Jifkins' having kept an account of the recipts and expenditures of the Washington Hall property after these transactions.

Answer. I have no knowledge of that.

Question. State whether you remember having stated to M'r McC'intock and myself in our conversation with you in regard to this transaction that you had suggested to Sweetser that as a way of getting out of this difficulty he would do well to put this property in some
104 one else hands to hold for him, and mentioned that you would hold it for him if he desired, but that Sweetser told you afterwards that his wife being a sister of Jifkins' wife the women preferred that he should put it in Jifkins' hands.

(Defendants by H. M. Hoyt, esq., counsel, object to the question as not a cross examination, as irrelevant and incompetent, as the witness's statements to M'r Ricketts and M'r McClintock are not evidence, even if made as assumed in the question.)

Answer. I have no recollection of stating to M'r McClintock and M'r Ricketts a willingness on my part to hold the property in any form for M'r Sweetser, nor do I believe I should have been likely to volunteer in a matter of this sort, having business of my own. I do remember the statement made by Sweetser that his wife being a sister of Jifkins' wife the women preferred that he should put the property into Jifkins' hands, and may have repeated that statement to Mess'rs Ricketts and McClintock. Real estate since 1863 has more than doubled in value, probably trebled, on Lackawanna avenue.

Question. State whether since this transaction the very large business in which you have been engaged has not been such as to make it unfair to ask you to remember the casual incidents of the transaction.

105 Answer. During this period I have been constantly engaged in extensive and various business operations, and should not be

likely to remember casual conversations in detail, but should be likely to remember any important facts bearing upon the case.

Question. State, M'r Scranton, whether your impression is, from your connection with this transaction, that Addison Sweetser parted with every right, or that he has or should have some right or equity in the matter.

(Defendants, by H. M. Hoyt, counsel, object: first, impression' or opinions of the witness cannot be evidence. If Sweetser has any rights in this property, they are to be established as matter of fact in law; M'r Scranton cannot be called as a legal expert; the witness cannot express his opinion of the legal relation of these parties.)

My impressions are that Sweeter parted with all legal rights in these premises, that whatever equities may have existed between him and the Mess'rs Jifkins, was a matter as between them, and of which I am ignorant.

JOS. H. SCRANTON.

Sworn and subscribed before me at the Wyoming House, in Scranton, 23d Oct., 1869.

N. C. SHOEMAKER,
Examiner.

106 L. C. TRAVIS, of Scranton, Pennsylvania, being produced, sworn, and examined on part of defendants, deposeth and saith:

I am a mason, plasterer, bricklayer, stonelayer, &c.; I worked at mason work *at mason work* for four years. I carried on the business as boss mason here in Scranton for thirteen years; I put up four brick buildings on Lackawanna avenue, in the city of Scranton. I am acquainted with the Washington Hall property; I was acquainted with it when it was put up; a fair market-value for that property in the year 1863 would have been about fourteen thousand dollars.

JOHN L. TRAVISS.

Cross-examined by M'r Ricketts:

The building probably cost ten thousand dollars, and lots was worth about four thousand dollars; that is the way I figure on it.

JOHN L. TRAVISS.

Sworn and subscribed before me at the Wyoming House in Scranton 23rd Oct., 1869.

N. C. SHOEMAKER,
Examiner.

H. S. PIERCE, of Scranton, Pennsylvania, being produced, sworn, and examined on the part of defendants, deposeth and saith:

I am acquained with these parties and acquainted with the Washington Hall property. I have had conversations with Addison Sweetser, the plaintiff in this case, relative to his rights in this property.

107 The conversation that I had with M'r Sweetser relative to his rights was, perhaps, a year ago. I may state, too, that several years ago—I should think, perhaps, three or four years ago, *perhaps three or four years ago* perhaps longer, I think it was—I remarked to M'r Jifkins that they had taken considerable of a load upon their shoulders with regard to this property. They replied that they hoped to get along with it, and hoped to do something for M'r Sweetser; that they were going to keep an account and see how the thing came out. I left the shop and soon met M'r Sweetser; I remarked to M'r

Sweetser that I guessed that he was all right, he was in good hands. I don't remember any further conversation with M'r Sweetser until a year ago or just before the suit commenced. I met him one morning on the street and he referred to this conversation. He said he was prepared to pay back the money to M'r Jifkins; that he wanted a reconveyance of the property, and would give me five hundred dollars if I would get the matter settled. He wanted me to see M'r Jifkins; I went and saw them at once; I referred to the previous conversation of some years ago, told them what M'r Sweetser wanted and what he had offered. They said they at no time expected or offered to convey the property to M'r Sweetser; that they were willing to give M'r Sweetser something, and that that was their object in keeping an account, to see how the thing would come out, and that was what they intended by
108 the remarks they made to me previously. Some amounts were talked of at this time. I think they said thirty-five hundred dollars as the amount, if M'r Sweetser should offer to settle for it, they might give him. They wished me to distinctly understand that they made no offer. I communicated this to M'r Sweetser. I expressed an opinion to M'r Sweetser that I might induce them to give five thousand dollars. I had, about this time, several interviews with M'r Sweetser and Mess'rs Jifkins. The answer I have given is the substance of the interviews. I had a judgment against M'r Sweetser and Mess'rs Jifkins. I had lent money to M'r Sweetser repeatedly, I think, on the endorsement of Mess'rs Jifkins. I can't state the amount here. I have still a judgment for one thousand dollars against them. It was against all of them originally. I revived it only against the Jifkins'. It was an amicable revival, and I did not think it important to get Sweetser's name. I obtained the judgment originally as Gillespie and Pierce vs. Addison Sweetser and J. Jifkins, s'r, J. Jifkins, j'r, and Thomas Jifkins, No. 220, January term, 1863; debt, $1,000. Whatever amount may have been paid on the Sweetzer indebtedness has been paid by Jifkins since the sale, I think. Since the suit has been commenced, M'r Sweetser several times in conversation said that I had told him that M'r Jifkins would reconvey the property back to him. After his doing
109 this repeatedly, I told M'r Sweetser that he must not state that to me again; that I had never told him so, and that M'r Jifkins never had told me he would. A long time ago, when I was living at Carbondale, there was an application made to me by M'r Sweetser for a loan. He came with a letter. I was not much acquainted in Scranton at that time. The letter came from source that induced me to look into the matter. I don't recollect who the letter was from. I have an impression that it was either from M'r Scranton or one of the Jifkins. I declined to give him a loan. I don't remember the amount; but I thought it a larger loan than I thought was prudent to give upon the property. I was not acquainted with the value of real estate at that time in Scranton, and could not estimate the value of the property. I only know that the loan was a larger one than I thought prudent to put upon the property.

Cross-examined by M'r Ricketts:

I have no doubt that the fact that I had not much faith in Scranton property had something to do with that opinion. At the first conversation with the Jifkins' I recollect the old gentleman and Thomas were present. My subsequent conversations were with them all. I don't mean to say that I had any particular conversation with the old gentle-

man; but he was present. I recollect one conversation in the
110 back room, where only James and Thomas were present.

H. S. PIERCE.

Sworn and subscribed before me at the Wyoming House, in Scranton, 23rd October, 1869.

N. C. SHOEMAKER, *Examiner.*

WILLIAM W. MANNESS, of Scranton, Pennsylvania, being produced, sworn, and examined on part of defendants, deposeth and saith:

I am a carpenter and builder. I have been engaged in the building business in Scranton since 1840. I am acquainted with the parties in this case, and with the Washington Hall property. In the spring of 1863 the Washington Hall property would have been worth from eleven thousand dollars to twelve thousand dollars.

Cross-examined by M'r Ricketts:

I do not know what the building cost. My impression is that M'r Sweetser told me the contract price was eight thousand or nine thousand dollars; but I think he also told me it overrun that considerably.

W. W. MANNESS.

Sworn and subscribed before me, at the Wyoming House, in Scranton, 23 Oct., 1869.

N. C. SHOEMAKER, *Examiner.*

JAMES JIFKINS, j'r, of Scranton, Pennsylvania, being produced,
111 sworn, and examined on the part of defendants, deposeth and saith:

I am acquainted with Addison Sweetzer. I made no arrangement with him in 1863 to purchase the Washington Hall property, nor ever. I became the purchaser jointly with my sons of this property from M'r Scranton. Part of the money which paid for this property was my own and part was the boys. No part of it that I ever heard belonged to Addison Sweetser. I never told Henry Ward to keep a separate account of the work done at the market and the work done at the hall.

Cross-examined by M'r Ricketts:

Myself, James Jifkins s'r, that is, my two sons, James Jifkins, j'r, and Thomas Jifkins, composed the firm of James Jifkins and Sons. I have not for some years taken an active part in our business; I have left it to my sons. The business of Jifkins & Sons is butchering. In 1863 we had no other income but from our business, except some rents from real estate. I cannot say what the amount of rents would be. My sons attended to that. They exceed five hundred dollars a good deal. I never interfered with the business, and don't really know how much they were. Don't know when the houses would be all full. I cannot say what the income from our butchering business was; I never interfered in it. James keeps the books, and I have no idea how much it was.

The money that we had paid for the Washington Hall property
112 did not come out of our butchering business. It did not come out of the rents of the real estate; it was borrowed money. I don't know where we borrowed it from. I have seen the accounts *accounts* of our business.

Question. Did James keep a separate account of the Washington Hall property business?

(Defendants, by M'r Handley, object, because the question, if answered in the affirmative, is not evidence in this cause.)

Answer. I never saw any separate account. I never looked at the books. It was not I told M'r Pierce that we were keeping a separate accounts of the books. I have no knowledge, either from conversation with my sons or otherwise, that they keep a separate account with the Washington Hall property. The fact is, I never interfered with the business at all. I am not a good scholar, and my sons attend to the business entirely. I am quite an old man—seventy-three years of age this month. I have no knowledge of my sons having any arrangement with Addison Sweetser with reference to this property. Never heard of any until I heard some fellow said it in court. M'r Sweetser, with two or three other men, came to me in March, 1868, and said that he had come to demand a settlement. I said to him, "I have nothing to settle with you, M'r Sweetser," and never had.

JAMES JIFKINS.

Sworn and subscribed before me at my office in Wilkesbarre, Oct. 25th, 1869

N. C. SHOEMAKER, *Examiner.*

113 THOMAS JIFKINS, of Scranton, being duly sworn and examined on the part of defendants, deposeth and saith:

I am one of the firm of James Jifkins and Sons, of Scranton. About 1862 M'r Sweetser was he'vily in debt. We had endorsed about four thousand dollars for him. There was no possible chance of his paying up his debts. He tried to secure a loan. He went to M'r Scranton, to John J. Blair, to Pierce, of Carbondale, I think to Swetland also, to try to obtain a loan and failed. I think right away after he failed to secure a loan executions were issued against his property, I had a conversation with him about this time. He said he wanted to pay his debts. He wanted me to go and see M'r Scranton and try to secure a loan, and explained how we were endorsers for him to an amount which would ruin us. I went to M'r Scranton and talked to him about it. He said it was impossible to obtain a loan for that amount on the Washington Hall property, but by taking a judgment on all the property that we had, possibly it might be done. He would secure the loan for the Jifkins. He advised me to go and see his attorney, M'r Sherrerd, and make arrangements to buy in the property. The property was advertised for sale at that time. The property was sold at sheriff's sale. M'r Scranton's attorney bid it in for him, and we purchased it from M'r Scranton. About this time M'r Sweetser told me that all he desired
114 was to see all his debts paid, or else he would not live six months. All of his debts have been paid, and if they are not satisfied they should be, I have paid the Lackawanna Iron & Coal Company twelve thousand dollars as one of the lien creditors of Sweetser. The twelve thousand dollars covered the claim of the Lackawanna Iron & Coal Company, and the claims Mr. Scranton has assumed against Sweetser's property. I paid Horatio Pierce one note of one thousand dollars, one of four hundred and thirty, and one of two hundred and eighty-five dollars. Two of these were endorsed papers, and one a judgment which we had to assume. We paid D. Oakley his claim. I think it was some seven hundred and odd dollars. That was a paper endorsed for Sweetser by us. We paid F. M. Hunt his claim of seven or eight hundred dollars. I think he had liens against Sweetser's property and took our paper for it, and we paid it. We paid John Handley, attorney for Egan, Kearney and Calkin. I think these notes *which* amounted to about seventeen hundred dollars. I should think there was

one note of a thousand dollars, one of four hundred and some odd dollars, and the other of two hundred dollars and odd, I think. I think these are liens against Addison Sweetser's property, which we took up and paid. William Breck had a claim against Sweetser, which we paid.

115 I think it was a judgment; think it was between two hundred and three hundred dollars. David Malvin had a judgment against Sweetser's property. This was a judgment on which the property was advertised and sold out. We paid this judgment. William Swetland had a claim against Sweetser. I think it was a note of Sweetser's endorsed by us, for three hundred and sixty odd dollars. I am not sure as to the amount, It must have been between three hundred and four hundred dollars. George Sanderson had a claim against Sweetser. I think it was a note between two and three hundred dollars endorsed by us. L. Sherrerd had a claim, I believe; I don't know the amount, but we paid it. We paid a claim which was called the Wilkesbarre note, a note discounted at the Wyoming Bank for Sweetser, upon which we were endorsers. I think the note was for four hundred dollars. We also paid a note at Pittston, a note drawn by Sweetser, discounted at the Pittston Bank, and endorsed by us. I think it was between two and three hundred dollars. During 1863 we paid out, or assumed to pay for Addison Sweetser, over eighteen thousand dollars. None of this eighteen dollars or over, which was paid out, was the money of Addison Sweetsers. It was the money of James Jifkins, James Jifkins, j'r, and Thomas Jifkins.

116 Question. State whether all the negotiations to secure a loan of money for Addison Sweetser by you and others were or were not totally abandoned.

Answer. They were all abandoned.

Question. State whether Sweetser had so expressed himself, and whether he had given up all hopes of saving his property, and that all he desired now was to have the property bring enough so as to satisfy all of the liens.

Answer. He did; that was his wish, that the building should be sold so that all his debts should be paid, and he be a free man; that if he did not take the building and pay his debts he could not live six months; that everybody was running him to death and suing him, so that he had no rest.

Question. State your reasons for purchasing this building from Joseph H. Scranton.

Answer. To save ourselves, and to secure the debts we had assumed for him.

Question. State whether you purchased this property to hold in trust for Addison Sweetser.

Answer. No, sir; we did not. We never made any contract with him, either verbally or in writing, to convey the property back to him at the end of five years, or at any other time. I am acquainted with J. A. Halstead of Scranton.

117 Question. State whether you, at any time, either before the sheriff's sale of the Washington Hall property, or after the sale, said to him, that I, father, and brother hold the property in trust for Addison Sweetser, or that said Sweetser had a right to redeem the same within five years.

Answer. No, sir; I never held any conversation with him on the subject at all. I am acquainted with Robert C. Moore, of Scranton, a brother-in-law of Sweetser. I did not have any conversation with him

about holding this property in trust for Sweetser; did not have any conversation with him at all on that subject.

Question. State whether you met Robert C. Moore at Scranton on the day when you returned from sheriff's sale and talked about discouraging parties from bidding at sheriff's sale of Washington Hall property, thereby saving Sweetser sheriff's fees.

Answer. No, sir; I did not. I went straight from the depot to our market to have my father and brother sign with me a judgment note for the Sweetser judgments which I had assumed in Wilkesbarre myself. I went with M'r Handley. The reason was I had purchased the judgments against Sweetser controlled by M'r Handley, and had given my own notes for them, and went with M'r Handley to get my father and brother to sign these notes with me. I have talked with Eluga
118 B. Colby about this property, but never in particular. I remember what Eluga B. Colby swore in this case, and I contradict it, that we held the building in trust for Addison Sweetser. I never told him so. I am acquainted with Thomas Hetzel, of Scranton, a little. I had no conversation with him on the subject of this property at all. I don't think I ever had any conversation with him on this subject at all.

Question. State whether or not you have held any conversation with Henry Ward relative to the Washington Hall property, or the *the* improvements you have made upon it; and if so, what were they?

Answer. I had no conversation with Henry Ward upon this subject; any repairs or fixings that had to be done to the Washington Hall property my brother James always gave the orders. I never had any conversation with John T. Welsh with reference to this property. I don't think I was present on Monday, May 6, 1867. I think if I had been there my writing would have been on the book. We put in some settees into Washington Hall, fixed up some of the old ones, and painted the walls about a year after the sale. I don't think I had any conversation on the day of sale with David H. Randall with reference to the sale. I saw him at the sale. I was not present at a conversation
119 between Merrifield and Sherrerd on the day of sale. Merrifield was present on the first sheriff's sale day. He was not present on the second, and the property was sold; at least I did not see him. Sweetser is indebted to Jifkins and Sons now; he owes us over six hundred dollars for meat. It is a running account. There is no arrangements between us that Sweetser should have Wolsey put up an awning; but previously to the sale he promised Halstead to have an awning put up and did so. I was present at the sheriff's sale of the Washington Hall property; I made no representation at all at the sheriff's sale; I left everything to M'r Sherrerd. It was the first time that I was ever in a sheriff's office. I never made any representation to bidders at the sheriff's sale or any time.

Question. If at any time you had any arrangement with Sweetser in reference to this property state it.

Answer. I never had any arrangement or agreement with Sweetser with reference to this property.

(Defendants put in evidence sheriff's deed for Washington Hall property to Joseph H. Scranton, acknowledged Feb'ry 25th, 1863, recorded in sheriff's deed book 15, page 546. Mechanics' lien recorded mech. lien docket No. 4, page 257, 258, and 272.

120 Cross-examined by M'r Ricketts:

Sweetser and I married sisters. In 1863 at the time of these transactions, Sweetser's wife was living. She has since died. Sweetser

and I were quite intimate in our business relations before this time. Sweetser endorsed for me and I endorsed for him. I have at times endorsed Sweetser' name on my notes without consulting him; he allowed me to do so. I am positive that there was no arrangement between Sweetser and any of us, James Jifkins and Sons, in regard to this property, nor as to making any settlement with him. We paid Scranton eighteen thousand dollars for the property; that is what the deed calls for. Scranton paid fifty dollars for it. The eighteen thousand dollars was the twelve thousand dollars we borrowed of Scranton with ten per cent. per annum for five years added to it. The other judgments and mechanics' liens were in addition to this. The money borrowed from Scranton was for five years. With the money borrowed from Scranton we paid the debts; that is, M'r Scranton and M'r Sherrerd, our attorneys, paid the debts; M'r Scranton assumed about twelve thousand dollars of the debts; that is, the company's debt and other liens. He had borrowed this amount for us, had assumed that amount of debts, and of course kept the money in his hands to pay them. This money was never in the hands of James Jifkins and Sons. It was in our
121 attorney's hands; I mean that what I said formerly, that Scranton advised us to go to Sherrerd to make arrangements to have the property bought in at public sale is correct. Sweetser so advised us. I don't mean that Scranton advised Jifkins & Sons, not Sweetser and Jifkins. I remember that Sweetser went with me. Scranton said that twelve thousand dollars could not be raised upon that property. M'r Sherrerd, our attorney, paid the claim of the Lackawanna Iron & Coal Company and satisfied it. I don't know whether their claim was a lien upon the property or a floating debt; part of it was for the lot. I think the claims they assumed to pay were mostly all liens upon the property. I never help to keep the accounts of our firm. My brother, James Jifkins, j'r, keeps the accounts. I can't say that I examined them. I don't have anything to do with the book matter; my brother always assumed the responsibility. He keeps his accounts in books. He did not keep a separate account of the Washington Hall property. I did not tell H. S. Pierce that he did. If M'r Pierce says so he was mistaken. I don't even remember M'r Pierce mentioning the book to me, nor I to him. I don't know that I had several conversations with M'r Pierce about this matter. The reason we had to assume the indebtedness to M'r Pierce after the sale, was because it was notes which we had endorsed.

Question. How did you manage to buy the property for fifty
122 dollars at that sale?

(Defendants by M'r Handley object to the manner in which the above question is framed, the record establishing the fact that Joseph H. Scranton purchased the property and not the Jifkins.)

Answer. Because there was nobody to bid against us.

Question. Why did you negotiate for the purchase of those judgments controlled by M'r Handley on that day?

(M'r Ricketts objects to the counsel for defendants telling the witness by an objection how they want the question answered.

Counsel for defendants, M'r Handley, declines to instruct the witness how to answer, and thereupon witness answers.)

Answer. Because they were entered up against the Washington Hall property; that was the only reason. In 1863 before we purchased the Washington Hall, Jifkins & Sons owned the meat market where we are now, a lot and a house, wagon-house, and barns thereon, in Penn Avenue. I believe we were building a brick house on the front of the

lot at the same time. That is all the real estate we owned at that time. We occupied the meat market ourselves at that time. We never rented out the lot on Penn Avenue before we built the brick building. I could not say how much our business yielded us at that time. It yielded us our living and some to spare. We worked late and early, three
123 of us, for nineteen years. I can't tell how much of a surplus we had from our business. We never kept an account of our profits; our only income was from our butchering.

Question. State what there was about giving a paper to Sweetser in reference to this matter.

Answer. M'r Sweetser asked for a paper, and I told him our lawyer forbid me giving him one.

Re-examined by counsel for defendants:

We considered ourselves as enterprising butchers as ever were in Scranton. We do as much business as any three of them. In 1863 we had good financial credit among business men in Scranton; just as much as we wanted.

THOMAS JIFKINS.

Sworn and subscribed before me at my office in Wilkesbarre, 25th Oct., 1859.

N. C. SHOEMAKER,
Examiner.

JAMES JIFKINS, j'r, of Scranton, being produced, sworn, and examined by the defendants, deposeth and saith:

I am of the firm of James Jifkins & Sons, of Scranton. I remember ever having any conversation with Richard Fitzgerald about renting any part of Washington Hall property. We had a dispute with Fitzgerald about paying for the fence between his house and Washington Hall. The fence was of no benefit to us, but Fitzgerald alleged that men were going in there and committing a nuisance. Fitzgerald
124 used abusive language. The' was some feeling about it between us. I spoke to Henry Ward about putting up a stage in Washington Hall. I think it was M'r Manness, the head boss, that I spoke to, and he sent M'r Ward to our place. I went down to the Hall with M'r Ward and showed him what I wanted, and he put men there to fulfill the order. I gave him no direction how to keep the account. All the work that they did was charged to us, and returned to the Lackawanna Iron & Coal Company's office. We paid them the bill. I have no recollection of John P. Welsh being at our place of business at all. I don't recollect having any conversation at all about this; I don't recollect that I ever spoke to him. I rented *rented* the saloon to Richard Anthony. I don't remember having any conversation with him about it otherwise than renting. I never had any conversation with Richard Anthony as to how we held the Washington Hall property. M'r Pierce came to our market twice, I believe—not more, to my knowledge, and said that Sweetser had been after him to try to get the property settled, and that he had offered him five hundred dollars to get it settled. I can't remember all that was said then, but I told him that we considered our deed from M'r Scranton good, but if he (Sweetser) wanted the property we would sell it to him. I never made any arrangement with M'r Sweetser whatever about conveying the property back to him. I
125 never had any conversation with M'r Sweetser about this property at all. We have paid over eighteen thousand dollars for this property. I can't remember that some of these liens were assigned to

Jifkins & Sons. There are judgments which M'r Handley controlled and others which we had to pay. Charles Breek had some judgments against the property; Gillespie and Pierce also had some judgments against it; F. F. Hunt had.

Question (by H. M. Hoyt). What I mean is this: Where judgments were assigned on the record they are to be considered satisfied, are they not, as of the date of assignment?

Answer. I consider them all satisfied; and if they are not, they ought to be, except Pierce's, and that is our own.

Cross-examined by M'r Ricketts:

I have stated all that I told M'r Pierce at the time he came to us, to the best of my knowledge. I don't remember that I told M'r Pierce that I was keeping a separate account of the Washington Hall property. If M'r Pierce thought so, he was mistaken. I never kept a separate account of the Washington Hall property. We are all one family, and never kept any particular items for either family. I have no recollection of telling M'r Pierce that we were going to save something out of the property for Sweetser if we could. I keep all the accounts that were kept for Jifkins & Sons.

126 Re-examined:

The judgment of E. & B. Bevan, if it was a lien against the property, was paid by us.

Cross-examined:

We paid all the liens against the property. The reason we paid them was because they were against the property when we took it. We had no other reasons but to clear our own property after we bought the Washington Hall.

JAMES JIFKINS, Jr.

Sworn and subscribed before me, at my office in Wilkesbarre, 25th October, 1869.

N. C. SHOEMAKER,
Examiner.

I hereby certify that the above witnesses were duly qualified and examined at the times and places stated, and subscribed their depositions in my presence.

N. C. SHOEMAKER,
Examiner.

M'r Ricketts, counsel for plaintiff, desires the following statement of objections to the testimony of James Jifkins, James Jifkins, j'r, and Thomas Jifkins, the same having been accidentally omitted when the testimony was taken, to be noted here, to wit:

The counsel for plaintiff obtained a rule on defendants to close their testimony by the 4th September, 1869. This was extended upon
127 the application of defendants, by the court, to the 9th of October, and then by agreement with myself it was extended to 21st October. On that day, after the testimony of William Sherrerd was taken, they requested me to go with them the next day to take testimony in Scranton. I then agreed to extend the time during the rest of the week, to wit, 22nd, 23rd October, at the same time notifying them that I would agree to no further extension of the time. I went to Scranton both on the 22nd and 23rd October for the purpose of taking testimony, and

they took testimony on both days, but only a portion of the time. There was abundant time to take all the testimony which they afterwards did take on those days in the forenoon of the 23rd. After they had finished the testimony of William M. Manness the defendants' counsel gave me notice that they had only a few papers to put in evidence, and they would like to do it at the examiner's office in Wilkesbarre on Monday, the 25th of October. I agreed to attend on Monday evening for that purpose, or at any time during the day, after I could get out of court. On Monday afternoon, instead of papers, they produced James Jifkins, James Jifkins, j'r, and Thomas Jifkins as witnesses, and had their testimony taken down by the examiner, which I objected to having read in evidence on account of the irregularity above stated, no reason whatever having been assigned for their non-production within the
128 time agreed upon.

REBUTTING EVIDENCE.

JOHN W. GREGORY affirmed.

I reside in Scranton. Have resided here since 1857. I own the corner property opposite the Washington Hall, No. 301 Lackawanna avenue.

Question. State what the Washington Hall property was worth at a fair estimate in 1862 and beginning of 1863.

(Defendants object to the question as introducing evidence in chief after notice given that plaintiff had closed their testimony in chief; that the evidence now elicited is not rebutting evidence.)

Answer. I should think that property was worth eighteen thousand dollars in 1862—from eighteen to twenty thousand dollars. I would have given twenty thousand dollars if I could not get it for less. I would give twenty thousand dollars for it now, if I can get it for that. I mean to say it would be very cheap at that.

J. W. GREGORY.

Sworn and subscribed before me, at the Wyoming House, in Scranton, 14th Jan'ry, 1870.

R. C. SHOEMAKER,
Examiner.

129 CHARLES SCHLAGER sworn.

Question. State whether you remember the sheriff's sale of the Washington Hall property in 1863.

Answer. Yes, I was present. I went there to attend the sale, to see what the building would fetch. I did not bid on the property.

Question. State why not.

(Defendants object that this is an examination in chief and not rebutting evidence, and further, the witnesse's reasons for not bidding are not evidence.)

Answer. The sale took place rather fast, in a fast way, and in the mean time I learned that the building was to be sold for the benefit of M'r Sweetser. The building was struck down for fifty dollars.

CHARLES SCHLAGER.

Sworn and subscribed before me, at the Wyoming House, in Scranton, 14th Janr'y, 1870.

R. C. SHOEMAKER,
Examiner.

F. F. HUNT sworn.

I have resided in Scranton since 1852. I own some real estate here. In 1863 I suppose the Washington Hall property would have been worth from fifteen to seventeen thousand dollars. I suppose it could have been sold for that.

130 (Defendants object that this testimony is in chief and not rebutting.)

F. F. HUNT.

Subscribed and sworn to before me, at the Wyoming House, in Scranton, 14th Jan'ry, 1870.

R. C. SHOEMAKER,
Examiner.

Plaintiff offers in evidence:

Deed, Effinger J. Kirlin and wife to Addison Sweetser for the lots upon which the Washington Hall property is built. Recorded in deed book No. 86, p. 111, &c. Consideration $2,225.

Submission to arbitration between Joseph Coar and Addison Sweetser of their dispute about the Washington Hall property, and the finding thereupon, which is marked "Exhibit A, R. C. S.," and hereto attached.

Amount of Amsden's estimate therein stated, being 15,952.88.

The allowance to Coar being 4 per cent. upon said estimate.

(Defendants object to the deed and submission and finding as evidence of value.)

ADDISON SWEETSER recalled and sworn:

Joel Amsden is dead.

Question. State whether this submission and finding marked "Exhibit A, R. C. S." correctly states the amount of Joel Amsden's estimate.

(Defendants object to the question because the paper referred to, if evidence at all in this case, explains the actual cost.)

131 Answer. It does, the finding drawn up by M'r Sherrerd.

Question. State whether there was any additional work not included in this statement.

Answer. This estimate does not include the excavation of the cellar, nor the vaults under the pavement. The excavation of the cellar and vaults was worth eight hundred dollars.

ADDISON SWEETSER.

Sworn and subscribed before me at the Wyoming House in Scranton, 14th January, 1870.

R. C. SHOEMAKER,
Examiner.

J. O. KERSTED sworn:

I have made a computation of the cost of excavating the cellar and vaults under Washington Hall in 1860 & 1861. I think excavating the vaults for and building the vaults at that time was worth four hundred and fifty-five dollars. Excavating the main cellar and side vaults was worth two hundred and ninety dollars.

(Defendants object to this evidence as not rebutting, being evidence in chief.)

Sworn and subscribed before me at Wyoming House, Scranton, January 14th, 1870.

R. C. SHOEMAKER,
Examiner.

132 CHARLES SCHLAGER recalled:

In 1862 & 1863, James Jifkins and James Jifkins, j'r, lived up here at the meat-market. Thomas Jifkins lived down on a lot on Penn avenue, in a frame building standing where the post office now stands. The meat market is twenty-five feet front. I can't say exactly what the width of the lot on Penn avenue is.

CHARLES SCHLAGER.

Sworn and subscribed before me at Wyoming House, Scranton, 14th January, 1870.

R. C. SHOEMAKER,
Examiner.

ADDISON SWEETSER recalled:

In 1862 and 1863, James Jifkins and James Jifkins, j'r, lived on Lackawanna avenue at their meat-market. Thomas Jifkins lived at the corner of Penn avenue and Commercial alley, the only lot they had on Penn avenue. The meat-market lot is twenty-five feet front. The Penn avenue lot is thirty feet front.

ADDISON SWEETSER.

Sworn & subscribed before me at Wyoming House, Scranton, 14th January, 1870.

R. C. SHOEMAKER,
Examiner.

HENRY GRIFFIN affirmed:

133 Question. State what knowledge you have of the sheriff's sale of the Washington Hall property, and the proceedings attending the same.

(Defendants object to this offer as eliciting testimony that should have been offered by the plaintiff in chief.)

Answer. The only knowledge I have of the transaction was obtained from a conversation I had with Samuel Sherrerd after the sale. I asked him how that property came to be sold so cheap. He said it was done by a little figuring; that it was sold for the benefit of M'r Sweetser. The heft of the main figuring was done by M'r Sweetser and M'r Jifkins. All the figuring that he did was to keep the bid down so as to make as little cost for M'r Sweetser as possible. I asked him how it came to be bid off in Scranton's name, and he said it wouldn't to have it bid off in Jifkins' name, as it would not bring the deed right; the creditors might make a fuss. He said that by fixing it in this way the Jifkins were to have it for five years; that Sweetser had the right to pay it off sooner if he could. He was to keep a correct account of the rents, and was to be paid a reasonable amount for his trouble. I asked him whether they had any writings between them. He said no, it would not do to have

134 them right off. He was to have a writing after awhile. The Jifkins were to receive the rents and give the property back to Sweetser when he got out of difficulty, with a reasonable compensation for their trouble. The rents were to go to help pay the indebtedness. In 1862 and 1863, James Jifkins and James, j'r., lived at their meat-market. Thomas Jifkins lived on Penn avenue where the post office now stands.

(Defendants object to the testimony of the witness with reference to any conversation with Samuel Sherrerd at the time mentioned in the evidence, as being incompetent and irrelevant.)

HENRY GRIFFIN.

Affirmed and subscribed before me at Wyoming House, Scranton, 14th January, 1870.

R. C. SHOEMAKER,
Examiner.

STEPHEN BENNETT sworn:

I occupied a saloon under the Washington Hall from 1866 until May 1869; I have fitted up the saloon considerably myself. In March, 1868, I understood there was a difficulty between Sweetser and Jifkins. James Jifkins, j'r, approached me at the post office. He asked what did I know about this lawsuit, or what did I tell Thomas Hards. I told him I heard there was to be a lawsuit, and that I was fixed as well as they were if there was going to be any difficulty. I wanted to see myself safe. He told me that there had been an arrangement between them and
135 Sweetser at the time they took the property, and that Sweetser had not fulfilled the contract for the reason that in six weeks after we had taken the building he was to give them thirteen hundred dollars, and he did not do so. At that time I was not acquainted with M'r Sweetser; I had simply seen him.

(Defendants object to the testimony of this witness, first, that it is not evidence; second, if evidence, it should have been produced in chief, and is not rebutting.)

Sworn and subscribed before me at Wyoming House, Scranton, January, 14th, 1870.

R. C. SHOEMAKER,
Examiner.

ZEBULON M. WARD, a witness produced, sworn, and examined on part of plaintiff, at Easton, February 4th, 1870:

I reside in Paterson, Passaic County, New Jersey. I am a regular licensed lawyer of the State of New Jersey; I am also surrogate of the county of Passaic. In 1863 I resided in Scranton, Pennsylvania; at that time I occupied an office in Washington Hall, Scranton, fronting on Penn avenue. I remember the time of the sheriff's sale of the Washington Hall property, at least by information.

Question. State whether on the day of sale James Jifkins, j'r, and M'r Scranton came into your office, and what occurred there.

(Defendants, by M'r Handley, object to witness answering this question, because it is evidence-in-chief and not rebutting, the
136 plaintiff having closed his direct testimony, and because the question is leading, irrelevant, and not evidence in this cause if answered in the affirmative.)

Answer. James Jifkins, j'r, and M'r Sweetser came to my office together in Washington Hall on the day of the sale of the Washington Hall property. M'r Jifkins asked me if I owed Sweetser any money. I told him I supposed I did. I told him I owed Sweetser money for rent. He asked me if I owed him any other money—said that M'r Sweetser had informed him that I owed him some on a horse. I told him I did not know as to that, as M'r Sweetser and I had a settlement to make regarding the horse. M'r Jifkins said that he was anxious to know how much m ney Sweetser had coming to him from different individuals, as there had been a sheriff's sale of the Washington Hall property that day at Wilkesbarre, and there had been an arrangement made whereby Sweetser was to pay the costs and expenses of the sale, and that he wantedt he friends of M'r Sweetser to take a hold as we

are doing, was his remark, and assist him. I told him I should pay M'r Sweetser no money on the horse until I had a settlement with him (Sweetser), but the rent that I owed I was ready to pay. M'r Jifkins asked me how much rent I was paying per month for the office. I told him seven dollars per month. He said that was not enough, and turned to M'r Sweetser and said, "You must have more for the rent of this office." I told M'r Jifkins before I would pay more rent I would
137 leave it, and also told M'r Sweetser the same. M'r Sweetser then said to M'r Jifkins, "I have made a bargain with Ward for the rent of this office until the first of May, and I don't want to raise his rent." M'r Jifkins said, "You can do as you like, but I think you are renting all of these offices too cheap, and before you get out of trouble you will find you will have to get more rent for these offices." I aske' M'r Sweetser if he wanted the money for the rent then. M'r Jifkins answered and said, yes; they wanted all the money they could raise that day. I paid the rent and drew a receipt for it. I then asked M'r Jifkins in what condition the property stood and who were the parties to receipt the rent of me. M'r Jifkins remarked, that they had made an arrangement with M'r Sweetser to take the property and collect the rents and try and help Sweetser out of his difficulties. I asked M'r Jifkins if he had been to Wilkesbarre that day. He said, Thomas had been down and had just returned. I asked him if the property had been bid in by Thomas. He said, no; that they had made arrangements with M'r Sweetser to let M'r Sherrerd buy it, and that it was to be deeded to us (the Jifkins) in a few days, and "we have agreed with M'r Sweetser," he said, "to get the money of a party on a mortgage to pay off the liabilities on the property of M'r Sweetser," and
138 just as soon as the rent would pay enough on a mortgage which they were about negotiating, so that M'r Sweetser would be able to help himself in raising money on the property, that they were to deed the property back to him. I asked M'r Jifkins why M'r Sweetser did not raise the money in his own name. M'r Jifkins replied, that in order to negotiate a mortgage on this property they would have to use their credit with the party in order to raise the money, as the interest would have to be paid promptly. I asked M'r Jifkins if M'r Sweetser could not have indemnified them for helping *them* by giving them a mortgage and retain the deed in his own name. M'r Jifkins said, no; that he had been advised to take a deed in the Jifkins' name; that they did not want to become responsible for any money on M'r Sweetser's property that the property would not be good for; that they did not like to mix outside matters in their business transactions. I remarked that it would be bad if any of them should die. M'r Jifkins said, no; that they were going to have M'r Sherrerd execute a paper which they were going to sign and give it to M'r Sweetser, so that in case any of them should die, M'r Sweetser would have no difficulty in getting his property again; that at the expiration of five years, if they were all living, he thought the rental of the property would have paid so much of the loan that they were to get on the property that he thought M'r Sweetser would be able to raise the balance that would
139 be required to pay the loan, and then they were to deed him back the property. He says, "That we are doing in this matter for M'r Sweetser we do not intend to charge him one cent for, but we want to see him get out of this trouble and have his property again, and then we hope that he will be more cautious." I paid the money to M'r Jifkins and M'r Sweetser signed the receipt.

Question. State whether M'r Jifkins made any statement as to the amount of rents and expenditures.

Answer. Not at the time of this conversation. In the spring of 1874 I was in partnership with my brother, W. G. Ward, in law business in Scranton. We rented an office in Washington Hall. M'r James Jifkins, j'r, came to our office for the rent. I paid it and took a receipt of him. My brother then asked how they were getting along with the building, and how they were succeeding in paying off the claim. M'r Jifkins remar'ed that the rental of the buildings was paying far better than they expected it would; that the war had been a great benefit to M'r Sweetser, as the provost marshal's renting all those rooms in the building, and paying good rent, and getting it promptly, was a great benefit to M'r Sweetser, and that he, M'r Jifkins, would be very glad when he, M'r Sweetser, got in a position to have the property deeded back to him, as they had had considerable trouble with it. I asked M'r Jifkins if they did not charge him (Sweetser) anything for their services.
140 He said no. He said Thomas', his brother's, wife, and Sweetser's wife being sisters, made them feel as though it was a family duty, and if it had not been for Thomas he would never have bothered with it. I then asked M'r Jifkins if they kept an account of the rent. He said that they did; that they had a separate book on which M'r Sweetser got credit for every dollar of rent they received, and that every month they knew just how much money they had towards paying on Sweetser's loan. My brother remarked that he was glad M'r Sweetser had found good friends in them. M'r Jifkins said that they would not have done it for any other man excepting Sweetser; that Sweetser having been an honest, hard-working, upright man, and having a family connection with Thomas, his brother, caused them to take hold of it, and he hoped, in a short time, that they would be able to deed M'r Sweetser back his property, sooner than the time agreed upon. I asked M'r Jifkins if they had a written agreement. He said no; they had never made that agreement in writing; that the matter was so well understood that they did not think it was necessary, and that M'r Sherred was their counsel, and he had told them that it might make some trouble with outside creditors of M'r Sweetser's if they entered into such an agreement in writing, but the very moment that M'r Sweetser became able to settle up that loan on the property,
141 that they were ready and willing to deed it back to him. I forgot to state that when I spoke of a written agreement to M'r Sweetser and M'r Jifkins at our first interview, M'r Sweetser asked me if I could not draw up the article for them, and remarked to M'r Jifkins, "Ward has done some business, and he can do this, and we can settle for it between us, and that will save some expense to be paid at the present time." M'r Jifkins remarked that he did not care who drew up the agreement, but it would be better to do one thing at a time, and that after the deed and mortgage was arranged and fixed on the property, that that would be the proper time for us to give you the agreement. I also had conversations with Thomas Jifkins on several different occasions. Thomas Jifkins and myself had a conversation on one occasion, and I remarked to him that M'r Sweetser's wife and hired girl were doing considerable work in keeping the hall in the upper story of the building clean. M'r Jifkins remarked that she was; that it was all done for M'r Sweetser's benefit; that he thought they, the Jifkins, were doing all they ought to do for M'r Sweetser; that they had done some things, too, as well as collect the rents; that they had the trouble of hiring men to do the repairs, and had paid them for them out of the

rents, and that he hoped that the time would soon come when they could deed Sweetser back his property, and let him take charge of it himself, as they had become tired of bothering with it. The
142 tenor and effect of the conversations with Thomas were the same with those of James, but so minute in detail. It will be five years next summer since I moved from Scranton to Paterson.

Cross-examined by M'r Handley:

At the first conversation, which I have related, M'r Addison Sweetser, James Jifkins, j'r, and myself were present. I am certain it was on Friday or Saturday, the sheriff's sale day at Wilkesbarre, of that term of the court. It was on Friday, 1863, I think. I have related this conversation as near as I can remember it. I did not put it in writing, but I charged my mind with it very particularly; it was towards evening, very near dusk. I paid M'r Jifkins fourteen dollars, two months' rent, on that day. I have look' among my papers for the receipt given at that time, and can't find it. I think that Thomas told me, a long time afterward, that the deed was given to M'r Scranton at the sheriff's sale; I don't know which of the Jifkins's held the title. I was informed by James Jifkins, j'r, that Thomas had been down at Wilkesbarre, and the property had been sold that day. In all this conversation with James Jifkins neither his father nor Thomas was present, and in all my conversations with Thomas neither his father nor James was present. I think it was about a month ago that I was requested to be examined as a witness in this case. I received a letter from M'r Sweetser
143 about a year ago, asking me to go to Wilkesbarre as a witness in this case. I did not answer that letter. M'r Sweetser made the request about a month ago. He wrote me a few days before his coming, and then he came to my place of business in Paterson. He showed me no papers pertaining to the case. M'r Sweetser asked me many questions about the matter. I told him that I would make a written statement of what I knew in the premises, and that he could show it to his counsel, and if they deemed it absolutely necessary, and I could leave my business long enough, I would meet them at Great Bend, P'a, or Easton, as a witness in this cause. I gave him a written statement drawn by my clerk and examined and signed by me. The statement made in that paper is similar to what I have sworn to now, but not in detail. I informed M'r Sweetser, upon giving him that paper, that I remembered much more than was in it, but did not think it *not think it* necessary to state it there. M'r Sweetser stated to me that his counsel were M'r Ricketts, M'r McClintock, and my brother, W. G. Ward, of Scranton. I should have stated, in mentioning the conversation with Thomas Jifkins, that at the time he told me that if he had not been present at the sale that others would have run Sweetser's property up so high that Sweetser would have had a large commission to have paid to the
144 sheriff, I asked him who the parties were. He spoke particularly of young Merrifield being one. He said the he had all he could do to persuade them not to bid on the property, and that he informed Merrifield and others that he was buying it for M'r Sweetser's benefit, and that the way he succeeded in buying it M'r Sweetser would have a very small commission to pay the sheriff.

Direct examination resumed:

The reason of my being so particular in remembering these conversations with James Jifkins, j'r, is because I was always suspicious of him after he demurred to the agreement spoken of, between him and Sweetser

being drawn by me, and before I left Scranton I informed M'r Sweetser that I had always had suspicions of him.

ZEBULON M. WARD.

Sworn and subscribed before me 4th February, 1870.

R. C. SHOEMAKER.
Examiner.

LUZERNE COUNTY, *ss:*

I hereby certify that the above witnesses were duly qualified and examined at the times and places, and subscribed their depositions in my presence, and that at the examination held before me both parties appeared in person and by counsel, and that the defendants were called, and, without objection at the time, examined and cross-examined.

R. C. SHOEMAKER,
Examiner.

145 EXHIBIT A.

Whereas Joseph Coar has heretofore constructed and built a certain three-story brick building for Addison Sweetser on the north corner of Lackwanna and Penn avenues in the borough of Scranton, in the county of Luzerne, and State of Pennsylvania; and whereas a dispute has arisen as to the compensation to be allowed to the said Coar for the said work, that is to say, it has been agreed between the parties that a certain estimate and valuation of materials and workmanship on the said building made by Joel Amsden, esq., is to be taken as conclusive as to the value thereof, but this estimate and valuation does not include any allowance for the time, skill, and management of the said Joseph Coar, expended, put forth, and exercised in and about the erection and construction of the said building, and the parties are not able to agree how much shall be allowed and accounted for the said Joseph Coar by the said Addison Sweetser for the same:

Now, therefore, it is hereby mutually agreed between the parties, for the purpose of a final disposal of the matter in dispute and for a valuable consideration by each to the other paid (the receipt whereof is hereby acknowledged), that all questions in relation to the amount of compensation to be allowed to the said Joseph Coar by the said Addison Sweetser for the erection and construction of the said building shall be left to the
146 decision of Samuel Shopland and Joseph L. Powells, esq'rs, as arbitrators mutually agreed upon by the parties, whose decision shall be final and conclusive as to all questions submitted to them. It being understood and agreed that provided the said arbitrators shall not be able to agree upon the amount to be awarded, they shall agree upon a third arbitrator, and the decision of a majority of the three arbitrators shall be final and conclusive between the parties as to all questions aforesaid. It is agreed that the basis upon which said decision is to be made is the aforesaid estimate and valuation of the materials and workmanship on the said building made by Joel Amsden, esq., which, so far as said material and workmanship, is to be final and conclusive. The arbitrators are to fix upon a certain percentage upon the amount of the said estimate and valuation which is to be allowed to the said Joseph Coar as a full compensation for his own work and labor, care and diligence, skill and management put forth and exercised by him in and about the erection and construction of the said building, and for builders' profits on the same, and is to include and cover any and all charges made or done by him, the said Joseph Coar, or any persons

in his employ, and any and all services rendered and materials furnished by him, in and about the construction and erection of said building not included in the said estimate and valuation made by
147 the said Joel Amsden, esq., and that the amount of the said estimate and valuation made by the said Joel Amsden, esq., together with the amount of the percentage thereon awarded by the arbitrators, as aforesaid, shall be the full amount of compensation to be allowed and accounted for by the said Addison Sweetser to the said Joseph Coar for the erection and construction of the said building in all its parts, and including any and all claims for services in any way connected therewith. And the said Addison Sweetser hereby agrees to pay and account with the said Joseph Coar for the who' amount of the award that shall be made by the said arbitrators aforesaid. And the said Joseph Coar hereby agrees to accept and receive the said amount in full satisfaction of any and all claims as aforesaid.

It is understood that either party may make its own statement to the arbitrators and present such papers to them as he chooses, and that the arbitrators may consider such statements and papers in making out their award as they may see fit. Said award, however, to be in the form of a percentage upon the said estimate of Joel Amsden, esq.

In witness whereof we have hereto set our hands and seals, this second day of July, A. D. 1861.

JOSEPH COAR. [L. S.]
ADDISON SWEETSER. [L. S.]

148 SCRANTON, *July* 9, '61.

In accordance with the agreement entered into between Joseph Coar and Addison Sweetser, we, the undersigned, appointed by them as arbitrators, have duly considered the matter over; there being a little difference of opinion between us, we finally concluded and agreed on a third man, which was and is M'r Wise, a practical builder; by so doing we very soon came to an unanimous conclusion to allow the said Joseph Coar four per cent. on the whole estimate cost according to J. Amsden's estimate, being what we consider right and just between the two parties, considering the prices allowed the said J. Coar in said estimate.

Hoping that both parties will feel satisfied that we have endeavored to do what is just, we therefore unanimously subscribe our names below.

Amount of Amsden's estimate is fifteen thousand nine hundred and fifty-two dollars.

C. WISE.
JOSEPH L. POWELL.
SAMUEL SHOPLAND.

SCRANTON, *November 2nd*, 1869.

The above does not include the excavation of the cellar, some 1,050 yards, worth at least $250, and vaults under the sidewalk on Lackawanna avenue, which cost nearly $500, I think.

149 The above work Joseph Coar had nothing to do with under this arrangement, nor M'r Amsden with his estimate.

A. SWEETSER.

150 *Memorandum of the deeds, mortgages, and judgments admitted in evidence as noted by the examiner.*

S. H. Puterbaugh, sheriff, to Joseph H. Scranton.	Sheriff deed dated 25th Febr'y, 1863, for the Washington Hall property, Scranton, sold as the property of Addison Sweetser, on w'its of vend. ex. bearing test Jan'ry 14, 1863, at suit of Jos. W Brock, ass'd to D. R Maloren vs. Addison Sweetser. Consideration $50. Recorded 25 Feb'y 1863, in sheriff 's deed-book No. 15.
Jos. H. Scranton, and wife, to James Jifkins, James Jifkins. j'r, and Thomas Jifkins.	Deed dated March 2, 1863, for the same Washington Hall property; acknowledged March 5, 1863. Consideration $18,000. Recorded in D. B. No. 95, p. 98, &cc.
James Jifkins, James Jifkins, j'r, and Thomas Jifkins, to J. H. Scranton.	Mortgage book No. 15, page 383. Mortgage dated March 2, 1863; acknowledgement, March 2, 1863. Penalty, 32,400. Debt, 16,000. Payments as follows: Sept. 1, 1863, $420. March 1, 1864, 420. Sept. 1, 1864, 420. M'ch 1, 1865, 420. Sept. 1, 1865, 420. M'ch 1, 1866, 420. Sept. 1, 1866, 420. M'ch 1, 1867, 420. Sept. 1, 1867, 420. M'ch 1, 1868, 12,420.

151 Mortgage book 15, page 385.

Assignment of above mortgage to William E. Dodge, executor of G. Phelps, deceased, dated 3rd March, 1863. Acknowleged March 2nd, 1867. Consideration, $12,000.

Judgments accompanying mortgage to Scranton.

J. H. Scranton, *to* W'm E. Dodge, ex'r, vs. mes Jifkins, James Jifkins, j'r, Thomas Jifkins.	No. 131. April term, 1863. D. S. B., 7th March, 1863, on bond dated March 2, 1863. Penalty, 32,400. Debt, 16,200. Costs, 4.22¼. 1st Sept., 1863, 420. 1st M'ch, 1864, 420. 1st Sept., 1864, 420. 1st M'ch, 1865, 420. 1st Sept., 1865, 420. 1st M'ch, 1866, 420. 1st Sept., 1866. 420. 1st M'ch. 1867, 420. 1st Sept., 1867, 420. 1st M'ch, 1868, 12 420. 1863, March 3. Ass'd to W. E. Dodge, ex. of A. G. Phelps, dec'd.

Judgments accompanying mortgage to Scranton—Continued.

J. H. Scranton vs. James Jifkins, James Jifkins, j'r, Thomas Jifkins.	No. 138, April term, 1863. D. S. B., March 9th, 1863, on bond dated March 2nd, 1863. Debt, 1,800. Costs, 4.22½. Sept., 1, 1863, 180. M'ch 1, 1864, 180. Sept. 1, 1864, 180. M'ch 1, 1865, 180. Sept. 1, 1865, 180. M'ch 1, 1866, 180. Sept. 1, 1866, 180. M'ch 1, 1867, 180. Sept. 1, 1867, 180. M'ch 1, 1868, 180.

NOTE.—This bond recites that it is part of the Washington Hall property.

152 NOTE.—The above judgments are all included in the mortgage to J. H. Scranton, recorded in M. B. No. 15, page 26, referred to in Sherrerd's testimony at page 2 of defendants' evidence, and were all paid by the $12,000 loan; the mortgageas well as the judgments being marked, satisfied, 18 March, 1863.—SHERRERD.

Judgments against Sweetser not reached by the $12,000 loan.

Ferris & Wisner vs. A. Sweetser.	No. 384, Aug. term, 1861; 18 Nov'r 1861, Judgm' sec. reg. Feb'ry 14, 1863, ass'd to James Jifkins & Sons.	Debt, 237.96. In't, 18 Nov., 186.
F. F. Hunt vs. same.	No. 749, Aug. term 1862; Nov. 17, 1862, judgment; 23 Jan'ry, 1863, assigned to Jifkins & Sons.	
James Agin vs. same.	No. 295. Jan'y term 1863; D. S. B. Dec. 6, 1872; Feb'y 21, 1862, ass'd to J. Jifkins & Sons. (Ass'd upon the record by Handley, att'y.)	Debt, 212.58. In't, 26 Nov., 1862.
J. W Brock, ass'd assignees to D. Malven, vs. same.	No. 365. Nov'r term 1862: D. S. B. Oct. 15, 1862; Feb'ry 10, 1863, ass'd to Jas. Jifkins & Sons.	Debt, 130.42. In't, 11 Oct., 1862.
Thomas Culkin vs. same.	No. 39. Febr'y term 1863; D. S. B. Jan'ry 9, 1863: Feb'ry 21, 1863. Ass'd to Jas. Jifkins & Sons upon the record by Handley, attorney.	Debt, 950. In't 5 Jan'y, 1863.

153 *Judgments against Sweetser satisfied by the $12,000 loan.*

C. H. & N. G Dowd vs. Addison Sweetser.	No. 80. Jan'ry term 1862; D, S. B. Nov. 16, 1871; Feb'ry 24, 1863, ass'd to J. H. Scranton. (Assig'mt, filed M'ch 3, 1863. Satisfied M'ch 18, 1863. S. SHERRERD, att'y.	Penalty, 2,867.04. Debt, 1,433.52.
Abraham Polhennus vs. same.	No. 81. Jan'ry term, 1862; D. S. B. Nov'r 16, 1861. Satisfied M'ch 18, 1863.—S. SHERRERD, att'y.	Penalty, 2,560.32. Debt, 1,280.16.

Judgments against Sweetser satisfied by the 12,000 *loan*—Continued.

	Jacob Boyer vs. same.	No. 82. Jan'y term 1862; D. S. B. Nov'r 16, 1861. Satisfied M'ch 1863. SHERRERD.	Penalty, 322.98. Debt, 161.49.
	Malven & Connill vs. same.	No. 83. Jan'y term 1862; D. S. B. Nov'r 16, 1861. Satisfied, M'ch 18, 1863.—SHERRERD.	Penalty, 1,121.84. Debt, 560.92.
	Lacka. I. & C. Co. vs. same.	No. 84. Jan'ry term 1862; D. S. B. Nov'r 16, 1861, Satisfied M'ch 18, 1863.—SHERRERD.	Penalty, 11,462.58. Debt, 5,731.92.
	L. Sherrerd vs. same.	No. 85. Jan'ry term 1862; D. S. B. Nov'r 16, 1861. Satisfied M'ch 18, 1863.—SHERRERD.	Penalty, 520.96. Debt, 285,48.
	Fisher & Sutphin vs. same.	No. 86. Jan'ry term 1862; D. S. B. Nov'r 16, 1861. Feb'ry 24, 1863, ass'd to J. H. Scranton; ass'd filed M'ch 3, 1863. Satisfied M'ch 18, 1863 —SHERRERD.	Penalty, 4,435.20. Debt. 2,217.60.
154	Michael Kearney vs. same.	No. 102. Feb'ry term 1863; D. S. B. Jan'ry 22, 1863. Feb'ry 21, '63, assigned to J. Jifkins & Sons upon the record by Handly, att'y.	Debt, 104.25. In't 171, 163.

155 August term, 1868. In equity.

SWEETSER *vs.* JIFKINS ET AL. } No. 3.

The masters who have been appointed by the court to hear this case not being able to attend at this term, the parties, by their counsel, appeared before the judge, at his chambers, and asked him to appoint Geo. R. Bedford to act as master in their stead; and the judge, therefore, appoint' him, and will cause a formal appointment to be made at the meeting of the court on Monday next, the parties agreeing that the said master may immediately act.

JOHN N. CONYNGHAM, *L. Judge.*

M'CH 31, 1870.

156 August term, 1868. In equity.

SWEETSER *vs.* JIFKINS ET AL. } No. 3.

Now, 9th January, 1871, the defendants move the court and file an application to extend, nunc pro tunc, the time for taking depositions of witnesses in behalf of the defendants, to include the 25th October, 1869.

The defendants, called at a hearing, to which adj'urnment was regularly noted by the examiner, being examined and cross-examined without objection made by pl'ff until after defendants had closed their testimony, so notified plaintiff, and the rebutting testimony of plaintiff was begun; all which appeared by the examining report.

The defendants also move to strike out all the testimony of plaintiff attempting to prove a contract by parol, and all the testimony given by plaintiff in rebutting, as the same was properly and only evidence in chief.

157 *Master's report.*

LUZERNE COUNTY, *ss:*

In the common pleas court of said county. August term, 1868.

ADDISON SWEETSER, PLAINTIFF,
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND Thomas Jifkins, defendants. } No. 3.

To the honorable the judges of the court of common pleas in and for the county of Luzerne:

The undersigned master, to whom was referred the bill and answer, together with the testimony taken in the above-stated case, respectfully reports:

That a large mass of testimony, much of which was contradictory, was submitted to his consideration. The rebutting testimony of the plaintiff, however, the master has rejected, or, rather, so much of it as tended to establish an agreement between the parties, and hereinafter mentioned and referred to, for the reason that such testimony, in the master's opinion, was properly evidence in chief, and not rebutting. The master has been asked to exclude the testimony of the several defendants, taken 25th October, 1869, because taken after time; but it appears that the time had on several occasions been extended by agree-
158 ment; the last adjournment was regularly noted by the examiner; and the plaintiff's counsel appeared on said 25th October, 1869, and cross-examined defendants, without objecting then to their testimony being taken; all which is duly certified by the examiner. This evidence is therefore received; and, upon consideration of the same, and of all other evidence in the case, except the plaintiff's rebutting testimony, rejected as before stated, the master reports the following conclusions of fact:

1. That prior to March 2nd, 1863, the plaintiff was the owner of certain real estate known as the Washington Hall property, situate in the borough of Scranton, and fully described in the bill filed in this case.

2. That at the time mentioned Sweetser was largely involved, and, being much pressed, he discussed with his friends a plan of putting his property in the hands of some one of them, and obtaining upon the same a loan of twelve thousand dollars for five years.

3. That at this time these defendants were creditors of this plaintiff, and, in addition, were liable for him, as endorsers, to a considerable amount; and that Thomas Jifkins, one of the defendants, is his brother-in-law, and was on very intimate terms with in matters of business.

4. That, in pursuance of the plan spoken of, the plaintiff applied
159 to Joseph H. Scranton to negotiate in New York a loan of twelve thousand dollars, to be secured by mortgage upon the Washington Hall property.

5. That the matter was pending for some time, and finally William E. Dodge, the party applied to, declined to make the loan, the security not being deemed sufficient.

6. That upon failure of this negotiation all efforts upon the part of the plaintiff, Sweetser, to obtain said loan were abandoned, and not again renewed.

7. That thereupon the plaintiff would seem to have given up all hope of saving anything, his principal anxiety now being to protect the Jif-

kins, who had stood his friends, and to see all his debts paid and he left free from any further annoyance and demand on their account.

8. That in this state of affairs it was arranged that those defendants should take the Washington Hall property and assume and pay Sweetser's entire indebtedness.

9. That in order to enable the Jifkins to carry out this arrangement and pay the debts of the plaintiff, it was necessary to obtain a loan of twelve thousand dollars, and this was ultimately furnished by William E. Dodge, through M'r Scranton, upon the execution by these
160 defendants of a mortgage upon the Washington Hall property and their other real estate in the borough of Scranton.

10. That at the time there was a considerable number of liens on the property, and therefore, to vest the title properly in these defendants discharged from prior incumbrances, and enable them to secure the proposed loan by a mortgage on these premises and their other real estate which should be a first lien, it was decided that a sheriff's sale should be had upon the writ then in the sheriff's hands, being fi. fa. No. 49, Febr'y term, 1863, issued on judgment No. 365, Nov'r term, 1862, Breck, assigned to Malven, vs. Sweetser.

11. That the said sale was made by the sheriff on the 2nd day of March, 1863, and the property bid off at the price of fifty dollars in the name of J. H. Scranton; and that said Scranton very soon thereafter conveyed the same to the defendants, naming as the consideration eighteen thousand dollars; that no money was paid by said defendants, but that they executed a mortgage upon the Washington Hall property and their other property for the same amount of $18,000, payable in five years, that sum being made up of the loan of twelve thousand dollars, together with interest added at the rate of ten per cent. from the
161 date to the maturity of the mortgage, and that said mortgage was assigned to William E. Dodge by said Scranton.

12. That the loan obtained from M'r Dodge was applied by these defendants to the payment of the indebtedness of M'r Sweetser, and that in addition thereto they paid or assumed to pay over six thousand dollars, in all making eighteen thousand dollars paid by them on account of such indebtedness, which represents the actual consideration paid for the Washington Hall property.

13. That most of the judgments standing against Sweetser have since the sale been satisfied of record, but that some of them in favor of Jifkins, as assignee of the several plaintiffs, remain open and unsatisfied, but that more than seven years have elapsed since the entry of the last-mentioned judgments, and that no attempt has been made to collect or revive them.

14. That at the time of the sheriff's sale the property in controversy was worth about eighteen thousand dollars, with usual allowance of time for payment, but that at a judicial sale it would not in any event have brought more than fifteen thousand dollars; that its present value is about forty thousand dollars.

162 15. That parties were discouraged from bidding at the sheriff's sale by representations made by Thomas Jifkins or M'r Shenerd, (the attorney conducting the sale), or both, that the sale was for the benefit of M'r Sweetser.

16. That prior to the sheriff's sale, but after the writ was in the sheriff's hands, the defendants, or some of them, gave the plaintiff to understand that he should have the right to redeem and entitle himself to a reconveyance of the Washington Hall property, provided that within five years he should reimburse these defendants for their trouble and for

expenditures made by them in the mean time, and that such understanding was to be reduced to writing, which, however, was never done.

17. That Sweetser made provision and was ready to make settlement according to the terms of the understanding above stated, but upon his offering to settle and demanding the reconveyance the same was refused. The prayer of the bill is in substance that an account be taken of the rents and profits received by the defendants, and that the plaintiff may be permitted to redeem the premises mentioned on payment of the amount paid out by the defendants, and that thereupon the said defendants may be compelled to reconvey to the plaintiff the property in controversy.

The master has found as matter of fact, though against the al-
163 legation of plaintiff, that the latter, for the reasons hereinbefore stated, had abandoned all further attempts to obtain the loan of twelve thousand dollars on the Washington Hall property.

Upon the failure of his negotiations, all parties, it would seem, became alarmed; the plaintiff because he was liable to have his property swept from him at a sheriff's sale for a merely nominal price, leaving him oppressed for life, it might be, with a burden of debt unprovided for; the defendants because they found themselves responsible for a large amount on Sweetser's account, and fearful lest they might be involved in the ruin which threatened him. Seeing little prospects of saving anything for himself, the plaintiff was at least anxious to save his friends from loss and have his debts paid. It was therefore arranged that these defendants should take the Washington Hall property and pay the indebtedness of the plaintiff. As there was a number of liens against the property, it was deemed advisable that a sheriff's sale should be had on the writ. This was done, and ultimately the legal title to the property in question was vested in these defendants. Did any equity remain in the plaintiff? The loan which was obtained was furnished, as the master conceives, solely on account of the defendants; they included in their mortgage not only the property that was purchased at the sheriff's sale, but also all their other real estate situated in the then borough of Scranton. It may be true that Sweetser took some
164 part in the negotiation for the loan which was ultimately procured, but he was no further interested in it than that it would enable the defendants to carry out the arrangement, to wit, the taking the property and paying the debts.

The plaintiff alleges and has introduced considerable evidence to prove that the defendants or some of them agreed that he should have the right to redeem at the end of five years, upon reimbursing them for their outlays, &c., and that thereupon he should have the right to a reconveyance, and that the understanding was to be reduced to writing. In the depressed condition of Sweetser, it is probably true that the defendants or some of them promised to reconvey upon the terms alleged, though the proof as to this is contradictory, but it may well be doubted whether any such promise imposes such an allegation as will be enforced by a court of chancery. The alleged contract is denied by the defendants under oath, and against its enforcement, in any event, they interpose the plea of the statute of frauds.

It has been declared a rule in chancery never to decree against the words of the statute in any case whatever upon mere parol proof, where that proof is contradictory (Rowton vs. Rowton, 1 H. & M., 91), and an agreement to reduce to writing will not take a case out of the statute (2 Story's Equity, 93, and note).

165 Another objection to granting the relief prayed for by the

plaintiff is that the alleged contract is wanting in the element of mutuality, one party bound and the other not, the plaintiff under no obligation to take the property if it declined in value, or did not yield what it cost the defendants. A court of equity will not enforce such an arrangement as a contract, there being no reciprocal obligation. (Adams' Equity, 82; 9 Harris, 50, 531; 1 N. & S., 554; 1 N. & S., 374; 13 W., 88; 2 Story's Equity, 41; 9 Casey, 158.)

Is there anything in the case to establish a trust ex maleficio? The promise to reconvey was prior to the sheriff's sale, but after the writ was in the sheriff's hands. As the master believes, the transfer of property to these defendants was not dependent upon any promise to reconvey.

His financial trouble rendered the plaintiff helpless, and he had the only alternative of seeing the property pass into Jifkins' hands for the full consideration, and the amount applied to the payment of his debts, or of having it struck down at a sheriff's sale to some other party for a price probably much below its value. The purchase by the defendants, then, was of advantage to the plaintiff, in that it saved his property from sacrifice. The master takes the ground that the failure of the defendants to observe their part of the alleged agreement left the plaintiff in no worse condition than if the same had not been made, for if
166 the defendants had declined to make it the result to the plaintiff must have been the same, or less favorable, as his property was already levied upon, and was ultimately sure to be sold, either with or without his consent, for the payment of his debts. The attempt to establish the trust so far is by an endeavor to prove fraud by the agreement, and then give effect to the agreement, if at all, upon the ground of fraud, which is, as has been said, reasoning in a vicious circle. (2 Leadg. Cas. in Eq., 706, and cases cited.)

In the view of this case taken by the master nothing had transpired up to the time of the sheriff's sale to establish a trust ex maleficio; and unless there was something in the circumstances attending the sheriff's sale, or what subsequently occurred, to create such trust, none exists.

It seems to be pretty well settled that one of these defendants and the attorney who conducted the sale discouraged bidding, and represented it to be for Sweetser's benefit, in order to keep the price down. If this injured Sweetser or any creditor the conduct might have the effect claimed for it, but the price did not represent the consideration actually paid by these defendants, and the statement made to other bidders was obviously for the purpose of saving sheriff's costs, and so far was of benefit to Sweetser. Moreover, no creditor could be injured, for these defendants assumed to pay all the claims, and held
167 assignments of many of them. Sweetser was not injured, for the apparent reason that a bid upon the property to its full value could not benefit him, as the lien then controlled by Jifkins amounted fully to such value. Most of the judgments against him were satisfied of record immediately after the sheriff's sale. It is true that some of them, standing in the name of these defendants as assignees, have not been satisfied, and still, apparently, remain open against the present plaintiff, and this, it is claimed, is evidence of fraud. Though more than five years have elapsed since the entry of such judgments, no attempt has been made either to collect or revive them, and the omission to satisfy cannot be considered as very serious.

Taken altogether, the evidence of fraud on part of these defendants is very meagre.

In the opinion of the master they paid a full consideration for the

property, and in order to take the same and carry out the agreement for paying the plaintiff's debts they assumed a grave responsibility in the then depressed condition of the finances of the country and put in jeopardy all the real estate of which they were the owners.

Had property declined in value, the loan would doubtless have proved to' much for them, for the plaintiff, though he might subsequently become abundantly able, was not bound in any event, according to
168 the terms of the agreement which he sets up, to take the property back and reimburse the defendants. The latter took the entire risk of value, and it seems only right that, in the absence of positive proof of mala fides, they should profit by the rise.

From the views above indicated the master is of the opinion that the plaintiff is not entitled to the relief prayed for, but that the defendants should be decreed to procure satisfaction to be entered on the record of all unsatisfied judgments against the plaintiff which were subsisting claims at the time of the sheriff's sale, and that otherwise the bill should be dismissed.

At the argument before the master the plaintiff was represented by A. Ricketer, esq., and the defendant by Hon. H. M. Hoyt and John Handley, esq., and he is indebted to these gentlemen for a thorough and exhaustive discussion of the facts presented by the testimony; and the defendants' counsel also furnished him with reference to a number of authorities. M'r Ricketer declined to argue the law of the case, denying the right of the master to report conclusions other than those of facts. In doing so, however, the master has followed the practice which has generally obtained in Pennsylvania, and which seems to have met the sanction of the supreme court.

Respectfully submitted.

G. R. BEDFORD,
Master in Chancery.

169 *Defendants' exceptions.*

LUZERNE COUNTY, *ss:*

In common pleas court, August term, 1868. In equity.

ADDISON SWEETSER *vs.* JAMES JIFKINS ET AL. } No. 3.

The defendants file the following exceptions to the report of George R. Bedford, esq., master in chancery:

1. To the findings in proposition numbered "14," that the present value of the property is about forty thousand dollars.

2. To proposition numbered "15," that parties were discouraged from bidding at the sheriff's sale by representations made by Thomas Jifkins, or M'r Sherrerd, the attorney conducting the sale, or both, that "the sale was for the benefit of M'r Sweetser," unless no more is meant by the finding than that the sale was made, as it was, with the full knowledge and assent of the plaintiff.

3. To proposition numbered "16," that prior to the sheriff's sale, but after the writ was in the sheriff's hands, the defendants or some of them promised the plaintiff that he should have the right to redeem and entitle himself to a reconveyance of the Washington Hall property, provided that within five years he should reimburse the defendants

170 for their trouble, and for expenditures made by them in the mean-
time, and that they further promised to reduce the understanding to writing, which, however, was never done.

4. To proposition numbered "17," that Sweetser made provision and was ready to make settlement according to the terms of the understanding above stated, but upon his offering to settle and demanding the reconveyance the same was refused.

HENRY M. HOYT,
Of Counsel for Defendants.

JULY 25, 1870.

Plaintiff's exceptions.

In the court of common pleas of Luzerne County, August term, 1868 sitting in equity.

ADDISON SWEETSER *vs.* JAMES JIFKINS ET AL. } No. 3.

Exception on part of plaintiff to the report prepared by G. R. Bedford, esq., master, to whom the case stands referred.

1. For that the plaintiff's rebutting testimony is rejected. The plaintiff, in his evidence in chief, sustained fully the allegation of
171 his bill. In respo'se to this the defendants presented testimony to show that—

(*a.*) The value of the property was not so great as represented by plaintiff's witnesses; the defendants' witnesses representing that they made up their estimates from their knowledge of the cost of the property.

(*b.*) That the transfer of the property to the defendants was not the result of the negotiation for a loan and the arrangement alleged by the plaintiff and proved by the testimony, but was the result of an entirely new negotiation and arrangement entered into after that referred to by plaintiff was abandoned, and that in this last arrangement the plaintiff had neither part nor lot.

(*c.*) That the reducing the arrangement to writing or giving plaintiff any paper at all was advised against and forbidden by Mes'r's Sherrerd and Brisbin in this last arrangement.

The plaintiff's rebutting evidence was then introduced to show that:

(*a.*) The original cost of the property was much greater than as represented by defendants' witnesses, and that they were mistaken in their estimate of its value.

(*b.*) The parties, plaintiff and defendants, did not themselves
172 understand the transfer as being the result of a new arrangement, but, on the contrary, treated it as alleged by the plaintiff, and even on the day of the sheriff's sale went together collecting the money of plaintiff to pay the expenses of the said sale.

(*c.*) That whatever advice they might have received, the defendants at no time previous to getting the title and possession of the property fully transferred to themselves gave the plaintiff any intimation of an unwillingness on their part to put the transaction in writing, but, on the contrary, down to the time of the sheriff's sale, and even after the same, they assured the plaintiff that when such transfer was made to them they would execute and deliver to him the paper agreed upon, showing his right to redeem.

The plaintiff submitted that this was properly introduced as rebutting evidence.

2. That the master received the testimony of the defendants themselves.

3. For that the testimony improperly introduced on the part of the defendants is not rejected, as requested by plaintiff's counsel, especially that in the testimony of Joseph H. Scranton.

173 4. For that, with the exception of the first four, the master's conclusions of fact are in the general incorrect; they are in some parts correct and true, but the truth is so mixed with error and connected with findings, in some respects wholly unsupported by evidence, in others directly against the weight of evidence, that the whole is rendered erroneous; they are also incomplete, important facts not being mentioned; and, as particular exception thereto, the plaintiff respectfully submits that the true conclusions of fact to be drawn from the whole evidence are as follows, to wit:

Conclusions of fact as submitted by plaintiff's counsel.

1. That in the latter part of 1862 and beginning of 1863 the plaintiff, Sweetzer, was considerably indebted, and was endeavoring to effect a loan for the term of five years upon the Washington Hall property in Scranton, of which he was the owner in fee.

NOTE.—The references are to the pages of the appendix.

See in the plaintiff's evidence: The judgment and liens, pp. 94-96; Sweetzer's testimony at page 37.

Defendants' evidence: Scranton's, p. 54; Sherrerd's, p. 47.

174 2. That at this time the defendants were creditors of his, and liable as endorsers for him to a considerable amount; that Thomas Jifkins, one of the defendants, was his brother-in-law, and they were on very intimate terms in matters of business.

Plaintiff's evidence: Sweetser's testimony, p. 37, 38.

Defendants' evidence: Thomas Jifkins, p. 71.

3. That at this time Thomas Jifkins proposed to Sweetser the putting his property into the hands of the defendants to save for him, and they would help him out of his difficulties.

Plaintiff's evidence: R. C. Moore, p. 7; Sweetser, p. 37.

4. That thereupon an arrangement was entered into between Sweetser, Joseph H. Scranton, and the defendants.

Plaintiff's evidence: Sweetzer's testimony, p. 38; Thomas Jifkins' letter, Exhibit C, page 46.

5. That the terms of this arrangement were that Sweetser was to obtain a loan of $12,000 for the term of five years upon a mortgage of his Washington Hall property; in addition to this mortgage the defendants were to enter into a judgment bond upon their property also, as collateral

175 security for said loan, and to secure the prompt payment of the interest thereon and for their security Sweetser was to transfer the title and management of the Washington Hall property to them for the same term of five years, they to rent it during that time to the best advantage, and make all necessary repairs, consulting Sweetser, however, as to the renting and repairs; to apply the rent and net proceeds to the payment first of that indebtedness for which they were responsible for him in any way, and all other indebtedness outside of the loan, and then to make such payment as they could upon the loan, to reduce it as much as possible. They were to keep an account of the receipts and expenditures, and at the end of the five years make a settlement with Sweetser, and reconvey to him the property, he paying to them a

reasonable compensation for their trouble, and also whatever indebtedness might remain.

This arrangement was fully carried out on Sweetser's part.

Plaintiff's evidence: Sweetser's testimony, p. 38; S. A. Halstead's testimony, pp. 5, 6; E. B. Colby's testimony, pp. 8, 9; B. Sweetser's testimony, p. 12; Tho's Hetzel's testimony, p. 13, 14; Rich'd Fitzgerald's testimony, pp. 14, 15; John T. Walsh's testimony, p. 20; C. H. Dowd's testimony, p. 33; Richard Anthony's testimony, p. 34; A. Hand's testimony, p. 45.

176 Defendants' evidence: H. S. Pierce's testimony, p. 62.

Plaintiff's rebutting evidence: Henry Griffin's testimony, p. 81; S. Bennett's testimony, p. 82; Z. W. Ward's testimony, pp. 83, 85.

6. That, under the evidence of Samuel Sherrerd, attorney for all parties, the transfer to the defendants was made through the medium of a sheriff's sale, "not as absolutely necessary," but as a convenient way of accomplishing the end proposed, and carry out the whole arrangement, the sheriff's sale being made to Scranton as a merely nominal purchaser at a nominal price, and he transferring the title to the defendants and taking from them a bond and mortgage for the amount of the $12,000 loan upon the property, which he assigned to William E. Dodge, the party furnishing the loan, Sherrerd being applied to by Sweetser and Jifkins by the direction of Scranton, acting as the mutual friend of both parties.

Plaintiff's evidence: The deeds, bonds, and mortgages, pp. 93, 94; Sweetser's testimony, 39, 40.

Defendants' evidence: Sherrerd's testimony, pp. 48, 50, 51; Scranton's testimony, pp. 55.

7. That it was part of the arrangement that the defendants were to give Sweetser a written memorandum of the transaction and agree-

177 ment to secure him in his right to redeem the property, which part they refused to perform after the transfer was made to them and they had obtained possession of the property.

Plaintiff's evidence: Sweetser, pp. 38, 41; A. Hand, p. 44.

Defendants' evidence: J. Birslin, p. 53; Sherrerd, p. 51, 52.

Plaintiff's rebutting evid.: Z. M. Ward, p. 85, 87; Henry Griffin, p. 81.

8. That it was part of the arrangement that Sweetser was to assist in whatever he could in making the property discharge the indebtedness and lessening the burden of the defendants, which he did by leaving the furniture and fixtures in the hall, by making permanent additions to the property, and by having it cleaned and kept in order by his wife and servant girls.

Plaintiff's evidence: Sweetser, p. 38, 43; E. B. Colby, p. 8; B. Sweetser, p. 13; B. F. Filmore, p. 22; Nathaniel Halstead, p. 22; J. H. Gunster, p. 23; James Woolsey, p. 35.

Pl'ff's rebutting evidence: Z. M. Ward, p. 87.

178 9. That in accordance with the arrangement the defendants kept a special or separate account of the receipts and expenditures of the property.

Plaintiff's evidence: E. B. Colby, p. 8; B. Sweetser, p. 12; Henry Ward, p. 18; Sweetser, p. 42.

Defendants' evidence: H. S. Pierce, p. 62.

Plaintiff's rebutting evidence: Z. M. Ward, p. 62.

This they now, however, deny, and refuse to produce any such account.

Plaintiff's evidence: James Jifkins, j'r, p. 36, 37.

10. That at the sheriff's sale all parties not concerned in this arrange-

ment were prevented bidding upon the property by statements from Thomas Jifkins and from Sherrerd, the attorney of the defendants, that the sale was simply made under an arrangement, and was for Sweetser's benefit.

Plaintiff's evidence: R. C. Moore, p. 7; E. Merrifie'd, pp. 31,
179 32; D. R. Randall, pp. 30, 31; A. Sweetser, p. 40; Charles Schlager, p. 78.

Plaintiff's rebutting evidence: Henry Griffin, p. 81; Z. M. Ward, pp. 88, 89.

11. That, in addition to the loan, other money of Sweetser's was collected by the defendants for the purpose of paying the costs and expenses of the sheriff's sale.

Pl'ff's rebutting evidence: Z. M. Ward, pp. 83, 84.

12. That it does not appear that any money of the defendants was used in the whole transaction, except perhaps in the purchase of certain judgments, which they kept open and unsatisfied against Sweetser, and which are still thus open and unsatisfied.

13. That the judgments and liens were marked "satisfied," so far as the twelve thousand dollar loan reached in payment; the rest were simply assigned to the defendants, and kept open and unsatisfied, and Sherrerd, the same attorney, had the management of the whole matter.

The judgments and records, pp. 94, 95, 96.

14. That Sweetser made provision and was ready to make settlement, according to the terms of the arrangement, at the end of the five years, but upon his offering and demanding the same the defendants refused to comply.

180 Plaintiff's evidence: D. Howel, page 24; John Felows, pp. 23, 24; E. W. Carlton, pp. 27, 28; Ja's Woolsey, p. 35; Sweetser, pp. 42, 43.

15. That the property, at the time of the sheriff's sale, was worth about twenty thousand dollars, and is now worth about forty thousand dollars.

Plaintiff's evidence: D. B. Aaker, p. 25; Ja's Shipland, p. 25; A. S. Benjamin, p. 26; J. R. Keeley, pp. 26, 27; N. Halstead, p. 28; Cyrenus Wise, p. 30; E. Merrifield, p. 32.

Defendants' evidence: Scranton, pp. 57, 60; J. L. Travis, p. 61; W. W. Mannes, p. 64.

Rebutting evidence: J. W. Gregory, p. 75; J. F. Hunt, p. 79; the deed on defendants' estimate & Sweetser, p. 79; J. O. Kiersteid, p. 80.

16. That the results of the property for the five years were more than sufficient to pay off all Sweetser's indebtedness.

181 Plaintiff's evidence: J. Zeidler, pp. 28, 35; A. Hand, pp. 29, 45.

NOTE.—Hand's and Zeidler's estimates agree; there is an apparent discrepancy, from the fact that Hand does not, in his estimate, include the hall and saloons in his testimony, p. 29.

17. That the defendants, by the testimony adduced even by themselves, have shown themselves admitting some right in Sweetser at the time he was demanding settlement; but, while denying that which he claims, they have not shown to what other right he was entitled, nor can any other right in him than that which he claims *can* be drawn from the whole testimony taken together.

18. That the testimony on the part of the plaintiff is accordant with itself and agreeing with the circumstances; but that on the part of the defendants is discordant in itself and contradictory, and not corresponding with the circumstances.

19. That the sheriff's sale and transfer to the defendants of the Washington Hall property are to be taken together as parts of one and the same transaction, and were had and intended for the purposes following, to wit:

182 1. The making the mortgage for the $12,000-loan the first lien, and then presenting such security as was satisfactory to the lender.

2. The securing the defendants for the responsibility they had already incurred, and for such additional responsibility as they might have to incur in getting plaintiff relieved from his pecuniary embarrassment; but a final, absolute transfer of the property thereby to the defendants was neither contemplated or intended by either party. All the plaintiff's evidence relating to the admission and statements of the defendants and their agents and their attorney, especially that of Z. M. Ward, pp. 83, 85, of the rebutting evidence.

Defendant's evidence: Sherrerd, pp. 48, 50; Scranton, p. 55.

And the plaintiff submits that where'nsoever the master's findings differ from the foregoing they are incorrect.

5. For that the master's conclusions of law are not only inapplicable to his own conclusions of fact, but are wholly inapplicable to the case, inasmuch as that the master has treated it as though it were a suit for the specific performance of a contract, whereas it is a suit for the redemption of mortgaged premises.

183 6. The plaintiff excepts to the master's report generally that it is an assumption of the judicial function.

A. RICKETTS,
Counsel for Pl'ff.

The master, having considered the several exceptions filed in this case, finds in them no reason for changing his report.

G. R. BEDFORD,
Master.

184 *Opinion of the court.*

In common pleas, August term, 1868. In equity.

ADDISON SWEETSER
vs.
THOMAS JIFKINS, JAMES JIFKINS, J'R, AND James Jifkins. } No. 3.

The present question arises upon exceptions by the plaintiff and defendants to the report of the master, to whom the bill, answers, and evidence were referred.

Objections were raised in the argument by defendants' counsel against the argumentative form of the plaintiff's first and fourth exceptions. The latter, so far as it is an exception, is general, and indicates nothing but dissatisfaction with all except the first conclusions of the report, and instead of specifying error substitutes in place of the residue of the report a series of nineteen conclusions by the plaintiff's counsel. We cannot approve this method of excepting; it interferes with the orderly treatment of the question in the case, and is not, in our view, in accordance with the rules. The 69th equity rule confines the party, on the hearing of the question of the confirming or setting aside the report, to the exceptions made before the master. Of the directions by Judge

Lowrey, in Mengas' Appeal, 7, 4, 221, applicable alike to auditor's and master's reports, the 12th is that "every exception to a report
185 should point specifically to the error complained of; otherwise it cannot properly be noticed." Again, in the 13th, in alluding to the 69th equity rule and its application to auditor's reports: "Thus no report can be set aside except on points to which the auditor's attention has been called, and then the same point is distinctly presented to the court below, and reviewed by them." Exception to a master's notice should not be prolix or argumentative, but should state precisely the fault imputed to it. (2 Daniels, ch. p. 1312, note 2.)

Everything which is not made matter of exception is considered waived, except error appearing on the face of the report. They are in the nature of special demurrers, and must point out, article by article, the parts of the report intended to be excepted to; otherwise the points not thus pointed out and excepted to will be taken as admitted. (Wayne, J., in Story v. Livingston, 13 Peters R., 359.)

A demurrer which in place of designating the errors alleged in the old should substitute a new and revised form of declaration would be an innovation in pleading.

The present controversy, however, involves large interests, and the questions presented, although informally raised, are entitled to careful consideration. From the mass of testimony, much of it conflicting, it is nevertheless clear, as the master has in substance found, that the plaintiff was, prior to March 2, 1863, the owner of the Washington Hall property in the city of Scranton, and that in the purchase of the
186 lots, and erection of the building had become involved in debts beyond his power of extrication, even after extension granted to him by his creditors. That in efforts for his relief the defendants had been rendered liable in large sums as his endorsers. That under an execution at the suit of Breck assigned to Malven vs. Sweetser, the Washington Hall property, the premises in dispute, was sold by the sheriff on the 21st day of February, 1863, to Joseph H. Scranton, for the nominal sum of fifty dollars. Pursuant to a verbal arrangement made by the Jifkins with Scranton prior to the sale, although after the issuing of the execution, a conveyance of the property was made by M'r Scranton to them as tenants in common on the 2nd of March, 1863, for the consideration of $18,000, they executing a mortgage to him upon this lot, and judgment bonds in that amount upon all their other real estate, consisting of a dwelling-house, lot, meat market, barn, wagon-house, &c., in Penn avenue in Scranton. The consideration was made up of the principal sum of $12,000, and $600, the interest thereon for five years, at ten per cent. per annum. The bonds and mortgage were assigned by M'r Scranton to William E. Dodge, of New York, who thereupon furnished upon their security the sum of $12,000, which money being paid to or placed at the disposal of the defendants, was applied, together with other money of their own, in all over or in the neighborhood
187 of $18,000, to the payment of incumbrances upon the property and the debts and judgments against Sweetser. Many of the judgments thus paid were satisfied upon the record by the Jifkins, to whom they had been assigned. Others, although paid by and assigned to them, are not satisfied, yet they admit should be, and that they claim no right to enforce them. M'r Scranton, the intermediate between Sweetser and Dodge, had refused, on previous application by Sweetser and the Jifkins', to advance or to recommend the advancement of the $12,000 on the security of the Washington Hall property alone, but was induced to recommend and succeeded in obtaining that sum on the

security of this property and the real estate of the defendants. The statement in the bill that the bond and mortgage were restricted in lien to the Washington Hall property is shown by the testimony and by the transaction itself to be an error. It is so admitted by counsel, and being a part of the transaction out of which the rights the parties spring is of importance in the case. The defendants denying any title in the plaintiff, refused, as charged in the bill, to execute a paper showing the nature of the transaction, and in March, 1868, when called upon by the plaintiff, five years after the sale, refused to settle with him on account of the rents, expenses, &c., and to convey the property to him.

All the other essential averments of the bill are denied by the
188 defendants in their answers and in their evidence.

The bill alleges in substance that the sheriff's sale to, and the bidding in at a nominal and undervalue by Scranton; his transfer to the defendants; the execution by them of the mortgage and bonds to secure the loan from Dodge; the payment out of this and their own money upon Sweetser's indebtedness, and their taking possession, were all one transaction, under and in compliance with an arrangement between the plaintiff, the defendants, and M'r Scranton, and rendered the transaction simply a mortgaging of the property by the plaintiff to the defendants for the period of five years, to secure the $12,000, its interest, the other debts of the plaintiff, the necessary repairs, and reasonable compensation to the defendants for their trouble. His prayer is for an account of rents and profits; that he may be permitted to redeem, and that the defendants be compelled to reconvey and deliver over all deeds, &c., "relating to the mortgaged premises."

The defendants in their answers and evidence deny severally and collectively each and all the foregoing averments. The conclusions of the master are in favor of the defendants, and the plaintiff's fourth exception, that "the master's conclusions of fact are in the general incorrect; in some parts correct and true, but the truth so mixed with error
189 that the whole is rendered erroneous," and the fifth exception, that the conclusions of law are inapplicable to the conclusions of fact and to the case "inasmuch as the master has treated it as though it were a suit for the specific performance of a contract, whereas it is a suit for the redemption of mortgaged premises," were doubtless, and may suffice to raise the question, was the transaction a mortgage which can, under the statute of frauds, be enforced in equity between these parties? The defendants, as we have stated, deny in their sworn answers, and by their evidence, any mortgaging by the plaintiff to them, or the existence of any arrangement in his behalf, by parol or otherwise, by which they were to hold the property in trust for him, or in any form in his interest, or to account for rents, or to reconvey, or to execute a paper showing the nature of any alleged arrangement.

M'r Scranton, the purchaser at sheriff's sale, the grantor in the deed to the defendants, also denies any such arrangement, either with or through him, or within his knowledge. The case, in this essential respect, is broadly distinguished from that of Houser vs. Lamont, 5 P. F. Smith, 311. There Judge Agnew remarks that "the peculiar and governing feature of the case is that Bowman, who purchased the premises at orphans' court sale, and had virtually agreed to sell them to Miss Lamont for the same price he paid, did not deny his sale to her, but rec-
190 ognized and made it the foundation of his conveyance to Houser, and came into court and testified to it." Here, on the contrary, Scranton denies any arrangement with or for Sweetser, of mortgage or otherwise, and came into court and persisted in such denyal. The ver-

dict had ascertained that Houser was a mortgagee, and the opinion adds: "Houser being a mere mortgagee by his arrangement with Bowman, the equity of redemption vested in Bowman for the benefit of Miss Lamont, and he only could contest here title on the ground of the statute of frauds. This he has not done, but he came into court as a witness in here behalf in support of her title by purchase from himself. Here it is that the special feature of the case already noticed comes into play. It is settled equity law that courts of equity will enforce specific performance of a contract within the statute of frauds, where it is confessed in the answer of the defendants," and under this special fact and governing feature of the case, the confession of the contract by Bowman, Houser was not permitted to set up the statute.

It is settled beyond controversy that a deed taken as a security for the loan of money is but a mortgage, and cannot by any force of words be converted into an absolute conveyance; that a series of acts and conveyances by others than the alleged mortgagers, as in the present case, by the sheriff through a public sale and sheriff's deed, by Scranton, the purchaser, conveying to, and the Jifkins accepting the convey-
191 ance, and paying or securing the payment of full consideration money, can be held to be a mortgage by Sweetser, is not so clear. That it can be so declared by parol, where all the intermediate actors, all those directly connected with the sheriff's sale, and the subsequent conveyance to the defendants, deny any such interest and result, receives at least no sanction from the case of House vs. Lamont.

The statute of frauds cannot be evaded by changing the forum from law to equity, nor a parol contract or trust vitalized by calling it a mortgage. The question is not so much what the contract is denominated in the bill as what it is shown to be in the evidence.

Upon this point the testimony of the plaintiff is largely made up, not of proof of the transaction itself, but of declarations of Thomas Jifkins, one of the defendants and tenants in common; although the witnesses, Fitzgerald, Nash, and Anthony introduce those of the other defendants.

The two witnesses who speak most clearly and in detail as to the terms of the understanding, and the nature of the tenure, as drawn from the declaration, are S. Halstead, who sums up the result of a conversation, before the sale, between Sweetser and Thomas Jifkins, that to save the property of the former from the liens against it Sweetser was to transfer it to Jifkins, a loan was to be made on bond and mortgage on the property, the defendants to collect the rents for five
192 years, apply them and the loan toward the payment of the debts, "and they were to hold the building in trust for that term of years," to keep account of moneys collected and expended, and at the end of that term of years make a settlement; Sweetser to pay all indebtedness and trouble, and the property to be reconveyed. "Subsequently the property was sold at sheriff's sale, and I understood in the first conversation that the transfer should be made in that way."

E. B. Colby states that in January, or first of *first of* February, 1863, in a conversation with Thomas Jifkins, "he told me that himself, his father, and his brother James had taken the Washington Hall building in trust, to keep for M'r Sweetser for a term of five years; at the expiration of this five years, M'r Sweetser was to pay the indebtedness on the building, and pay them for their trouble, and go into possession of the building." Again, in his cross examination, he said "himself, his father, and brother, had taken it in trust for M'r Sweetser"; he used the words in trust.

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Benton Sweetser says, detailing a conversation with Thomas Jifkins in the spring of 1863, "he said they had taken the building for the term of five years, and to hold for M'r Sweetser." The testimony of R. Fitzgerald is, that in 1866, James Jifkins, jr., told me "the matter was only in trust in his hands for M'r Sweetser, or something to that effect"; of J. T. Walsh, "that they only held it for a collateral security for
193 the term of five years"; and of R. Anthony, that James Jifkins, jr., in 1863, "told me * * * he didn't know how long he should hold it, as he only held it to pay a debt."

It is said in Robertson v. Robertson, 9 Watts, 42, and the cases cited, on questions of parol contracts, "that declarations of parties are the most unsatisfactory species of evidence, on account of the facility with which it may be fabricated, and the impossibility of contradicting it. Besides, the slightest mistates or failure of recollection may totally alter the effect of the declaration. There is no case which calls for a more firm administration of the law than where a party seeks to enforce a parol contract for the sale of land."

When declarations conflict with direct proof of the transaction itself, and are vague and contradictory, they are obviously entitled to little weight, and it is difficult therefore, under the evidence, of which the foregoing is a brief summary, to find either the intent or agreement of mortgage against the answers of the defendants and their evidence, by the actors, and the effects of the transaction itself.

Assuming that the witnesses have truly given the defendants' declarations, the conclusion from those made prior to the sale is, that the Jifkins were to take, and from those made after the sale, that they had bought or taken, Sweetser's property at sheriff 's sale, and verbally
194 agreed to hold it in trust for him, with a right of redemption in him at the end of five years; that the defendants or some of them, gave the plaintiff so to understand is, in substance, the master's 16th conclusion.

But this is to bring the transaction directly within the rule settled by repeated decisions in Pennsylvania and elsewhere, before and since the act of April 22nd, 1866, "that if one buys the defendant's property at sheriff's sale and verbally agrees to hold it in trust for the defendant with a right of redemption in the defendant within a limited time, it is a contract resting in parol merely and not transferring any title in land." Fox vs. Heffner, 1 N. & S., 372; Jackman vs. Ringland, 4 N. & S., 149, Barrett v. Dougherty, 8 C., 371, and the authority there cited. These several cases like the present all arose under sheriffs' sales, and in the two former, as in the present case, the effort was to put the question on the ground, not of a p'rol trust or of a purchase in trust, but a loan of money by the purchaser at sheriff's sale to the defendant, and the acceptance of an absolute deed from the sheriff by the purchaser, with a parol defeazance, thus constituting in fact a mortgage of the land by the defendant in the execution to the purchaser. To this, the answer applies here as in Fox v. Heffner, that the deed was not by Sweetser to the defendants, but a sheriff's sale in due legal form to Scranton,
195 and a deed by him to Jifkins. The money was not lent to Sweetser; he did not receive nor pay it out; raised by the Jifkins on the security of this and their other property, it was theirs; they were the owners of the fund (Kisler v. Kisler, 2 Watts, 326), and they paid it out.

We do not overlook the fact that Addison Sweetser's version connects the original application for a loan by himself with the subsequent raising of the money, but in this he is contradicted not only in the answers and testimony of the several defendants, but also Mess'rs Scran-

ton, Sherrerd, and Beislien, all who, in their view, had actual knowledge of direct agency in or connection with the loan. The master finds that the attempts of the plaintiff were abandoned and a new arrangement made differing in the security and in the terms, and under which no right, title, or trust existed in his favor, further than to be relieved from all his indebtedness by a forced parting with the property.

Many of the declarations of the defendants represented by the plaintiff's witnesses to have been made in January and early February, 1863, the interval between the commencement and abandonment of the earliest negotiations, and a large portion of the plaintiff's own statements may be referred to these abandoned efforts. M'r Sweetser in his evi-
196 dence, as in fact in his bill, makes no mention of the terms on which the loan from Dodge was finally effected, upon the additional security of the defendants' property made by M'r Scranton an indispensable condition. How is this important omission accounted for? If his statements be referred to the abandoned arrangement that did not comtemplate a lien on the defendants' real estate, and the omission is explained, the evidence reconciled. If, however, they are understood to refer to the final arrangement he omits an important fact, the decisive condition of obtaining the loan. The earlier portion of his testimony which includes the details of the proposed transaction obviously relates to the first portion and the negotiation under it. He has furnished no definite means of determining when these ended and those actually resulting in the loan began. He details conversation after the sale, including a demand upon the defendants and M'r Sherrerd for a paper, leaving to implication that its provisions were to be such as were or may have been contemplated under the first proposed and abandoned arrangement. May not this demand and the declaration of the defendants in the evidence be referred to the understanding the defendants set up and to a paper in which the payment of his debts and his relief from his pecuniary embarrassments should be granted? Thus viewed, much
197 of the conflict of the testimony is removed, but the proof of a mortgaging fails. If not so interpreted the conflict remains, and is such as to preclude a decree authorizing him to retain, and the result in either alternative is the same. For while performance of a parol agreement admitted in the answer will be decreed, yet if denied in the answer, denied by the testimony of all who were actually concerned in the transaction, by all who speak from actual knowledge, and rests chiefly or solely on proof or declaration long after the occurrence, the statute ought to apply with decisive effect.

It is said in Hill on Trustees, on page 61, that no relief will be given when the defendant by oath in his answer the trust alleged by the bill, except, indeed, in cases of fraud, which if otherwise established would require the interference of the court under any circumstances. And even in cases of fraud parol evidence is not regarded with favor, and the court will not act upon it if it be not strong, irrefragable evidence, or if it be contradicted or controverted by other evidence. Ib. 167, and authorities cited.

A court of equity ought not to act upon conjectures, and if it is test law to take a case out of the statute of frauds and perjuries the parol contract of sale should not only be established by competent proof, but it should be clear, definite, unequivocal. If the condition and terms are uncertain, or not made out by satisfactory proof, specific perform-
198 ance will not be denied. Chamley v. Hansbury, 1 H., 16. Even part performance to take a case out of the statutes always supposes a completed agreement.

It must be obligatory, and what is done in part performance must be under the terms of the agreement and by force of the agreement. Lester v. Foxcroft, 2nd Leading Cases in Equity, 636, note; L. D. Brougham, 2nd H. L. Cas., 158. It is further to be borne in mind that "parties est conditio defendentis," and what a parol agreement may be a sufficient defence to a bill for specific performance, though utterly unavailing as a ground to enforce it. Shoopstate v. Adams, 2 Gr., 213. The doctrine of all the authorities is that a mere parol agreement which is insufficient to ground a decree may be sufficient to rebutt an equity. Raffensberger v. Collision, 4, 6, 426. But under evidence equivocal in its application, contradicted by the answers and by the testimony of the defendants, "it would" in the language of Judge Rogen, in Jackman v. Ringland, 4 W. & S., 150, "be of the most mischevious consequence if the purchaser at a public sale could at any distance of time have an absolute turned into a defeasible title by parol evidence. If we countenance such a doctrine, in all cases when the property rises in value will the attempt be made.

To guard against this inconvenience was the statute made. Besides such a contract would be unequal, for what remedy would the
199 purchaser have against the former owner? From the very nature of the case in nine times out of ten the contract will be all on one side."

The foregoing views and conclusions assume that the transaction is untainted by fraud. When purchasers at a sheriff's sale although they have paid their own money, are guilty of fraud, artifice, or collusion, they are held to be trustees ex maleficia, for the creditors and debtors also, unless the debtor be particeps criminis (Hariver vs. O'Connor, 10 Watts., 313; Fox vs. Heffner, 1 W. & S., 376). But fraud to have this effect must be in making the purchase; a resulting trust is raised only by fraud in obtaining the title, or from payment of the purchase money when the title is acquired. It is fraud in the purchase which makes the holder of a title trustee (Burnett v. Dougherty, 3 C., 371).

The fraud which convert a purchaser at a sheriff's sale into a trustee of the debtor must have been a fraud at the time of the sale. Subsequent coin will not answer any more than subsequent payment of the purchase money will convert an absolute purchases into a naked trust. "When the purchaser at sheriff's sale promises to hold for the debtor, and afterwards refuses to comply with his engagement, the fraud, if any, is not at the sale, not in the promise, but in the subsequent breach. That is too late," per Strong, J., in Kellam v. Smith, 9 C., 164. Mere quiescence or omission to take other steps to procure money to pay
200 the debt and retain the property, though induced by faith in the promises, is not available for their purpose. Ib., 165.

We concur in the master's conclusions that the true consideration for the sale was $18,000, the full value then of the property; that no creditors were or could be injured, inasmuch as all judgments and debts against Sweetser were, under the arrangement, to be paid irrespective of the price which the property would bring, an arrangement in which the creditors acquiesced, which the defendants have carried out by the payment of almost if not all of Sweetser's indebtedness, and avowed readiness, obligation, and ability to pay any residue remaining unpaid.

We cannot concur in the master's 15th conclusion that parties were discouraged *by* bidding by representations made at the sale by Thomas Jifkins or M'r Sherrerd.

That an impression prevailed and prevented competition in bidding that the purchaser was to pay Sweetser's indebtedness, which amounted

to full value of the property, seems probable under the testimony of M'r Randall and M'r Hand; but in view of the denial of any representation at the sale of Thomas Jifkins and by M'r Sherrerd, who conducted the sale, and who states that he was studiously guarded in all that was said or done to leave no interest or equity in the defendant in the execution, or any ground on which to question the transaction or which
201 might impair the title acquired under the sale as the security, the evidence is at least so contradictory that we cannot accept the fact of such representations in their legal sense and consequences as proved, and the defendants' 2nd exception is therefore sustained.

The bill covers a contract of mortgage with no imputation of fraud; the plaintiff avows participation in all that occurred at the sale. In the discussion of the bill he says: "The said Joseph H. Scranton purchasing the property at sheriff's sale for the nominal sum of fifty dollars, all other persons present being prevented bidding by the representations made at the time by the counsel for all parties that the sale was made in pursuance of and to carry out the above mentioned arrangement." If creditors do not, may he be allowed under these circumstances of participation to complain? Fraud is nowhere alleged nor unconscionable advantage of his credulity or his necessities charged. The burden of the bill is a parol agreement to bid in the land through Scranton at a sheriff's sale, hold it for five years with a right of redemption in Sweetser, and that the time having expired, the defendants have broken their promise and agreement, on the faith of which he has neither done nor suffered anything not susceptable of compensation in damages; an agreement which the cases hold cannot be enforced in equity.
202 When a party to a contract which might be impaired on the ground of fraud, knowing the fraud, nevertheless elects to treat the transaction as a contract, he thereby looses his right of rescinding it. Brown Leg. Max., 353.

The probata should correspond with the allegata, the contract be proved as laid, and the result of the bill and the evidence be a distinct and consistent claim.

The allusions in the letter of Thomas Jifkins are not sufficiently certain and distinct to help the plaintiff's case, nor do we think that the leaving of the settees in the hall, or the sweeping it for a time by the plaintiff's wife, acts susceptable of compensation in damages, and claimed by defendants to have been compensated in credits at their shop, are available either as evidence of a mortgage or as a part performance to take the case out of the statute.

If the third exception relates to M'r Scranton's answer to the question whether or not the Jifkins were bona fide purchasers for a valuable consideration of this property (and we understand and assume that it does), the question was clearly objectionable, and the answer not in evidence; but objection to the question should have been made at the time. A party may not assent to an answer, take the chances of its being favorable, if so, let it stand, but if unfavorable, make objection here in court on the hearing.

From aught that appears, we cannot say that the master did not
203 reject the evidence in coming to his conclusions, and cannot assume that it influenced them, or set aside his report upon this exception.

In answer to the plaintiff's 6th exception, we merely refer to the rules of equity, to 2nd Daniels Ch. Pr. 1211; Lance's appeal, 5 San., 16, of a reference to a *reference to a* master even after argument on appeal;

Backus' appeal, 8 Sun., 1861; Hendrick's appeal, ib., 211; and Clark's appeal, 12 Sm., 447.

The plaintiff's exceptions are, therefore, overruled.

The question raised in the defendants' 3rd exception we have fully discussed and disposed of. The 1st and 4th are not sustained, and the master's report and conclusions, except the 15th, are approved.

We may have misapprehended the law and decisions, not always on these questions easily reconcilable, yet under a firm belief in the wisdom of the statute of frauds, were are inclined at this day, when it is become a known and recognized rule of property, to give to its support rather than to possible exceptions the benefit of any reasonable doubt.

The grounds on which the defendants have placed their defence, and the view in which the case has been considered by the court, render it proper and incumbent on them that the judgment referred to in the evidence and report, standing open against the plaintiff, be satisfied; yet we are furnished with no list or statement to enable us to make any more specific order for their satisfaction. We are of
204 the opinion that the plaintiff has failed to sustain his bill, and thereupon adjudge and decree that his prayer for relief be refused, and his bill be dismissed with costs.

EDMUND L. DANA,
Additional Law Judge.

205 In the court of common pleas of Luzerne County, sitting in equity.
August term, 1868.

ADDISON SWEETSER
JAMES JIFKINS ET AL. } No. 3.

Now, Oct. 21, 1872, an order is granted upon G. R. Bedford, esq., master, to whom this case stands referred, to take an account between the parties, to speed the proceedings before him, and make his report without delay.

By the court.

P' A. RICKETTS,
Counsel for Pl'ff.

206 In the common pleas court of Luzerne County, sitting in equity.
August term, 1868.

ADDISON SWEETSER
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND Thomas Jifkins. } No. 3.

Now, June 8th, 1872, it is ordered that it be referred to George R. Bedford, esq., one of the masters of this court, to take an account between the parties in this cause, as directed by the order of the supreme court made herein.

By the court.

207 In the court of common pleas of Luzerne County, sitting in equity. August T., 1868.

ADDISON SWEETSER
vs.
JAMES JIFKINS ET AL. } No. 3.

To the honorable the judges of said county:

The petition of Addison Sweetser respectfully represents that ever since the order referring the above-mentioned cause to G. R. Bedford, esq., master in chancery, to take an account between the parties the said plaintiff has used all diligence to have the said account taken, but the said defendants, although continually urged, have entirely neglected or refused to bring in their account of the receipts and disbursements on their part from and on account of the property the subject of said suit. Meanwhile they are collecting continually all the rents of said property, amounting to five hundred dollars and upwards per month, and which are paid principally monthly in advance; and at the same time, at every day fixed by the said master for them to bring in their accounts of such receipts, they present, instead of such accounts, one and another excuse for neglecting or refusing to do, and so procure continual delay. And your petitioner further shows that the said property is suffering greatly for want of repairs, and that unless he is en-
208 abled to make them before cold weather set in, he will suffer serious loss by reason of damage thereby to the said property. And he further shows that instead of being indebted to the defendants aforesaid, in any sum whatever, they are greatly indebted to him, and that upon settling the aforesaid accounts a balance of several thousand dollars will be found due him; and also, that if it shall so please the court, he is ready to give such security as the court may require in order to certainly indemnify the defendants against any possible loss on accounts of the immediate conveyance of the property to him, and putting him in possession thereof.

He therefore prays the court to make an order directing the defendants to at once reconvey the said property to the said plaintiff, and deliver to him the possession thereof without waiting for the final settlement of the said accounts.

ADDISON SWEETSER.

LUZERNE COUNTY, *ss:*

Addison Sweetser, being duly sworn, says that the facts set forth in the foregoing petition are true to the best of his knowledge and belief.

ADDISON SWEETSER.

Sworn and subscribed this 19th day of October, A. D. 1872.

ROBERT V. LERERS,
Per *Prot.*

209 SWEETSER
vs.
JIFKINS ET AL. } No. . In equity.

Now, Nov'r 22, 1872, court appoint M. B. Houpt, esq., builder, of Wilkesbarre, to make a personal examination of the Washington Hall property, with the view of ascertaining whether any, and, if so, what repairs are needed, and to report the same to the court on Monday, November 25th, 1872.

And the court also further order and direct that Samuel Jifkins opens up and exhibits all parts of the said property to the said M. B. Houpt.

210 In the court of common pleas of Luzerne County, sitting in equity. August term, 1868.

ADDISON SWEETSER
vs.
JAMES JIFKINS ET AL. } No. 3.

Jacob Bryant, being duly sworn, says: I am a builder. I have recently examined the Washington Hall property in Scranton. I found the same in need of repairs, which should be made before cold weather set in or the building would be caused serious injury. The gutters on the roof and the water conductors are all in bad condition and leaky, and in cold weather the water leaking from them upon the walls and freezing would produce greater or less damage, according to the weather. The walls are already seriously damaged from last winter's action, and this would be greatly increased if left unrepaired and unprotected for another winter. The building needs repairs more or less all through, and the pavements are now in a dangerous condition from the fact that they are supported by stringers thrown across the vaults under the same, and these are now rotten. I heard a policeman to-day inform M'r Sweetser that he must look after his pavements, or he would have a bill of damages to pay.

JACOB BRYANT.

Sworn and subscribed this 19th Oct., A. D. 1872, before
M. C. GAUGHAM,
For Prot.

211 In the common pleas court of Luzerne County, sitting in equity. August term, 1868.

ADDISON SWEETSER
vs.
JAMES JIFKINS ET AL. } No. 3.

LUZERNE COUNTY, *ss:*

Edward Heermans, being duly sworn, says: I am a builder; I this morning examined the Washington Hall property, in Scranton; I found the building in a bad condition from the roof and water-pipe leaking; the plastering has been badly wet, in some places it has fallen off entirely, in other places it is badly stained, and gives indication that sooner or later it will fall off; on the outside the gutters of the roof leak upon the wall in such wise that the wall is wet for a considerable distance from the cornice downwards, in one place down to the foundations; freezing weather in this condition would very materially injure the wall, and there is urgent need of immediate care being taken to preserve the building from further injury; it has been already very considerably injured by neglect.

EDWARD HEERMANS.

Sworn and subscribed this 11th day of November, A. D. 1872, before

M. E. GAUGHAM.

212 CITY OF SCRANTON, *ss:*

Before me, the subscriber, an alderman in and for said city of Scranton, county of Luzerne and State of Pennsylvania, personally appeared James Woolsey, builder, who, being duly sworn, doth depose and say that he has carefully and fully examined into the condition of the building situate corner of Lackawanna and Penn avenues in said city, called and known by the name of Washington Hall; that he finds that the roof of said building leaks in a dozen places or more badly; that the roof of the said building is very much out of repair, that in fact the said building greatly needs a new roof to protect the walls of the said building from injury and decay; the whole ceiling over the third floor of said building is sustaining great damage from the leakage of the water through the roof; that the northeast wall of said building is cracked and injured from the effect of the water freezing in said wall, and the joist or timber in said wall are liable to decay, thereby endangering—from the water and dampness—the safety of the said building; that the gutters and conductors of said building are nearly worn out, causing the wall of said building to be greatly damaged; and further saith not.

JAMES WOOLSEY.

Sworn and subscribed before me this 12th day of November, A. D. 1872.

FRED. FULLER, *Ald.*

213 CITY OF SCRANTON, *ss:*

Before me, the subscriber, an alderman in and for the said city of Scranton, county of Luzerne and State of Pennsylvania, personally appeared Jeremiah Schiffer, builder, who, being duly sworn, doth depose and say that he has carefully and fully examined into the condition of the building situate corner of Lackawanna and Penn avenues, called and known by the name of Washington Hall; that he finds that the roof of the said building is very much out of repair, that, in fact that the said building greatly needs a new roof to protect the walls of said building from injury and decay; that the whole ceiling over the third floor of said building is sustaining great damage from the leakage of the water through the roof; that the northeast wall of said building is cracked and injured from the effects of the water freezing in said wall, and that the joist or timbers in said wall are liable to decay from the water and dampness, thereby endangering the safety of the said building; that the gutters and conductors of said building are nearly worn out, causing the walls of said building to be greatly damaged; and further saith not.

JEREMIAH SHIFFER.

Sworn and subscribed before me this 12th day of November, A. D. 1872.

FRED. FULLER, *Ald.*

214 In the common pleas court of Luzerne County, sitting in equity. August term, 1868.

ADDISON SWEETSER *vs.* JAMES JIFKINS. } No. 3.

George B. Silsbee, being duly sworn, says: I am a builder; I have recently examined the Washington Hall property in Scranton; I found the walls in bad condition, from the water having leaked upon them;

I found the mortar in some places washed out nearly the depth of a brick; unless repaired they would suffer very serious injury by the action of another winter; the gutters and conductors are all in bad condition and leaky, and the water continually leaking from them, and by such action the inside walls, as well as the outside ones, are sooner or later effected and injured. The building needs repairs more or less throughout; the pavements are in an especially bad condition by reason of the support under them having become rotten; the vaults are not arched, and the pavement is supported simply by wooden stringers. These repairs should be made at once, before cold weather, as another winter would very greatly injure the property in its present condition.

GEO. B. SILSBEE.

Sworn and subscribed this 19th October, A. D. 1872, before me.
M. E. GOUGHAM,
Per Prot.

215 LUZERNE COUNTY, *ss:*

Personally appeared Thomas C. Lyddon, who, after being duly sworn according to law, doth depose and say that he is a resident of the last past sixteen years, and carpenter and builder by trade; that I am personally acquainted with the Washington Hall property since it was built; that on the 9th day of December, 1872, your deponent made a personal examination of said building, with the view of ascertaining its present condition, &c.; that said building is in good order and repair, as far as the carpenter and mason work is concerned.

THOMAS C. LYDDON.

Sworn & subscribed before me this 9th day of November, A. D. 1872.
LEWIS S. WATERS, *Ald.*

216 LUZERNE COUNTY, *ss:*

Personally appeared Joseph Schirl, who, after being duly sworn according to law, doth depose and say that he is a resident of Scranton for the last past twenty-two years, and mason and builder by trade; that I am personally acquainted with the Washington Hall property since it was first erected; that on the 9th day of November, 1872, your deponent made a personal examination of said building, and especially the stone and brick walls of said building, with a view of ascertaining the present condition of said stone and brick work; that the same are in good order and repair, certainly in as good repair as any other brick and stone work in Scranton.

JOSEPH SHIRL.

Sworn and subscribed before me this 9th day of November, 1872.
LEWIS S. WATERS, *Ald.*

217 LUZERNE COUNTY:

Personally appeared James Jifkins, who, after being duly sworn according to law, doth depose and say that for the last past two years and over James Jifkins, s'r, father of your deponent, has been a resident and citizen of the State of Virginia; that during at least eighteen months of that period said James Jifkins was, and is now, of unsound mind; that on the eighteenth day of November, 1872, this deponent, in conjunction with Thomas Jifkins, employed counsel at Winchester, Virginia, to take all necessary action to have the said James Jifkins declared a lunatic and person of unsound mind; that on the same day D'r Love and D'r Miller made a personal examination of the said James Jifkins, and reported him to be a person of unsound mind; that to your

deponent's own personal knowledge the said James Jifkins has been for the last past two years a person of unsound mind.

JAMES JIFKINS, J'R.

Sworn and subscribed before me this 22nd day of Nov'r, 1872.

PETER SEIBEL, *Pro*,
P. COLLINS.

218 ADDISON SWEETSER *vs.* JAMES JIFKINS ET AL. } No 3.

August term, 1868. In equity.

To the honorable the judges of the court of common pleas, sitting in equity:

The undersigned, having been appointed by your honors to examine and report the present condition of the Washington Hall property of Scranton, and to report what repairs, if any, are needed, respectfully reports that in accordance with the order of your honors in that behalf, personal examination of said premises were made by the undersigned, and find the building in the following condition: Foundation walls in good order; brick walls in good order, except in one or two places slightly stained by former breaks in the gutter and conductor. Roof in good condition, except about four places in steep part of roof, which is covered with slate, and flat part of roof tin, which needs to be soldered and painted. Plastering and carpenter work is in as good condition as usual, but some of the plastering is injured by leak in conductor and from general usage; however, not to exceed thirty-five dollars.

I examined Washington Hall sidewalk and others, and find that it is in as good condition as some others in that vicinity, but would
219 recommend a*n* new walk to be put down in its stead. I would therefore recommend them repairs to be made as soon as possible.

Respectfully,

M. B. HOUPT.

DEC. 12, 1872.

220 In the common pleas court of Luzerne County, sitting in equity.
August term, 1868.

ADDISON SWEETSER, PLAINTIFF, *vs.* JAMES JIFKINS, JAMES JIFKINS, J'R, AND Thomas Jifkins, defendants. } No. 3.

To the honorable the judges of said court:

The petition of Thomas Jifkins, James Jifkins, j'r, of Winchester, Frederick County, State of Virginia, respectfully shows that your petitioners are two of the defendants in this suit, James Jifkins having died at Winchester aforesaid on the seventh day of January, A. D. 1873, and that the same was brought by Addison Sweetser, plaintiff, on the 25th day of June, A. D. 1868, in the court of common pleas of Luzerne County, sitting in equity, at the August term of said court, and that your petitioners are now, and since the twelfth day of November, A. D. 1869, have been, bona fide citizens of the State of Virginia; that the plaintiff is and was at the time of bringing the suit a citizen of Penn-

sylvania; that the amount in dispute exceeds five hundred dollars exclusive of costs, it being real estate in the city of Scranton, valued at thirty thousand dollars, and full described in plaintiff's bill; that all the defendants are citizens of Virginia, and the other defendant,
221 now dead, by will made and executed on the 15th day of May, 1866, devised and bequeathed all his said interest in the matter in controversy in this case to your petitioners, and that the said suit is one in which there can be a final determination of the controversy so far as it concerns your petitioners without the presence of the other defendant or his legal representatives as parties in this cause.

And your petitioners further respectfully represent that this suit has not yet had a trial and final hearing, but that the same is pending in said court of common pleas, sitting in equity, and that your petitioners desire to remove this suit before the trial and final hearing into the next circuit court of the United States to be held in the western district of Pennsylvania, in the third circuit, in pursuance of the provisions of law as contained in the act of Congress approved July 27, 1866, entitled "An act for the removal of ca'ses in certain cases from the State courts," and that we are ready and willing to give such good and sufficient surety as the court may direct for our doing all acts and things required to be done by the said provisions of law upon the removal of a suit into the United States court, and we herewith offer our bond, executed by J. C. Burgess, of the city of Scranton, as surety in the penal sum of five thousand dollars, conditional that your petitioners shall enter in the next circuit court of the United States to be held in the western district of Pennsylvania, in the third circuit, on the first day of its session,
222 copies of all proceedings, process, pleadings, depositions, testimony, and other proceedings in this suit, and doing such other appropriate acts as by the said act of Congress approved July 27, 1866, are required to be done upon the removal of a suit into the United States court; and your petitioner therefore prays that the said bond may be accepted as good and sufficient surety according to the said provisions of law, and that the said suit may be removed into the next circuit court of the United States to be held in the western district of Pennsylvania, in the third circuit, pursuant to the statute of the United States in such case made and provided, and that no further proceedings may be had therein in this court.

And your petitioners will ever pray, &c.

THOMAS JIFKINS.
JAMES JIFKINS, J'R.

JOHN HANDLEY,
Att'y for Defendant Petitioners.

STATE OF PENNSYLVANIA,
Luzerne County, ss:

James Jifkins, j'r, and Thomas Jifkins, the petitioners in the foregoing petition, being duly sworn, depose and say that they have read the petition subscribed by them, and know the contents thereof, and that the same is true of their own knowledge, except as to those matters therein stated on information and belief, and as to those matters we believe them to be true, and further saith not.

THOMAS JIFKINS,
JAMES JIFKINS, J'R.

Sworn and subscribed before me this 22nd day of August, A. D. 1874.

E. P. KINGSBURY,
Notary Public.

223 We, James Jifkins, j'r, Thomas Jifkins, of Manchester, Frederick County, State of Virginia, as principals, and J. C. Burgess, of Scranton, Pennsylvania, as surety, are held and firmly bound unto Addison Sweetser, of Scranton, Pennsylvania, in the sum of five thousand dollars lawful money of the United States of America, to be paid to the said Addison Sweetser, his successors, or assigns, for which payment well and truly to be made we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the twenty-second day of August, A. D. 1874.

Whereas a suit was brought on the 20th day of June, A. D. 1868, in the court of common pleas of Luzerne County, sitting in equity, by the said Addison Sweetser against the said James Jifkins, James Jifkins, j'r, and Thomas Jifkins, and the same is now pending for trial and final hearing in the court aforesaid, and is removable to the circuit court of the United States for the western district of Pennsylvania, in the third circuit, under the act of Congress approved the 27th day of July, 1866, entitled "An act for the removal of causes in certain cases from State courts."

And whereas the said James Jifkins, j'r, and Thomas Jifkins have made and filed in the court of common pleas of Luzerne County, sitting in equity, the affidavit required by the said amendatory act for the removal of said suit unto the next circuit court of the United States
224 to be held in the western district of Pennsylvania:

Now, therefore, the condition of the above obligation is such, that if the above-bounden James Jifkins, j'r, and Thomas Jifkins, or their legal representatives, shall enter or cause to be entered in the circuit court of the United States for the western district of Pennsylvania on the first day of its stated session next ensuing after the order of the court of common pleas of Luzerne County, sitting in equity, for the removal of said suit into the said circuit court, copies of all process, pleadings, depositions, testimony, and other proceedings in said suit, and do or cause to be done such other appropriate acts as by the said act of Congress approved July 27th, A. D. 1866, are required to be done upon the removal of a suit unto the United States court, then the above o'ligation to be void; otherwise to remain in full force and virtue.

JAMES JIFKINS, J'R. [SEAL.]
THOMAS JIFKINS. [SEAL.]
J. C. BURGESS. [SEAL.]

STATE OF PENNSYLVANIA,
Luzerne County, ss:

J. C. Burgess, the surety in the foregoing o'ligation named, being duly sworn, deposes and says that he is a resident of the State of Pennsylvania, and a householder, and is worth the sum of fifty thousand dollars over and above all his just debts and liabilities, and exclusive of
225 property exempt by law from execution.

J. C. BURGESS.

STATE OF PENNSYLVANIA,
Luzerne County, ss:

I certify that on the 22nd day of August, A. D. 1874, before me personally appeared James Jifkins, j'r, Thomas Jifkins, and J. C. Burgess, to me known to be the persons described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same as their own free act and deed for the use and purpose therein mentioned.

E. P. KINGSBURY,
Notary Public.

226 In the common pleas court of Luzerne County, sitting in equity.
August term, 1876.

ADDISON SWEETSER, PLAINTIFF,
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND Thomas Jifkins, defendants. } No. 3.

STATE OF PENNSYLVANIA,
County of Luzerne, ss:

James Jifkins, j'r, and Thomas Jifkins, being duly sworn according to law, say that they are two of the defendants named in the above-stated suit; that the same was commenced on the 20th day of June, 1868; that at the time the suit was brought and at the present time the plaintiff was and is a citizen of the State of Pennsylvania, and the defendants are now and have been since the twelfth day of November, A. D. 1869, citizens of the State of Virginia; that one of the defendants, James Jifkins, died at Winchester, Virginia, on the seventh day of January, A. D. 1873; that between the said plaintiff and defendants there is a controversy, and the matter in dispute exceeds the sum of five hundred dollars, exclusive of costs, it being real estate situate in the city of Scranton, valued at thirty thousand dollars, and fully described in plaintiff's bill; that defendants have filed with the prothonotary a petition for the removal of the above-named cause
227 from the said court to the United States circuit court for the western district of Pennsylvania, and a bond with good and sufficient surety according to the statute of the United States in such cases made and provided; that your deponents desire to move before the October term of this court for an order removing the above suit to the United States circuit court aforesaid, and the said defendants desire a stay of proceedings herein until such motion can be made.

JAMES JIFKINS, J'R.
THOMAS JIFKINS.

Sworn and subscribed before me this 22nd day of August, A. D. 1874.
E. B. KINGSBURY,
Notary Public.

In the common pleas court of Luzerne County, sitting in equity
August term, 1868.

ADDISON SWEETSER, PLAINTIFF,
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND Thomas Jifkins, defendants, } No. 3.

On reading the affidavit of James Jifkins, j'r, and Thomas Jifkins, the defendants, it is hereby ordered that all further proceedings on the part of the plaintiff in this suit be stayed until October term, 1874, to be held at Wilkesbarre in the third Monday of October, 1874.

E. L. DANA, *Judge.*

AUG. 24, 1874.

228 In the common pleas court of Luzerne County, sitting in equity. August term, 1868.

ADDISON SWEETSER, PLAINTIFF,
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND Thomas Jifkins, defendants. } No. 3.

DEAR SIR: Please take notice that on the petition of the defendants in this suit, and on the bond accompanying the same, and on the notice of appearance of the same defendants herein, and on the affidavit of James Jifkins, j'r, and Thomas Jifkins, copies of which said petition, bond, notice, and affidavit are herewith served, and ar' all the papers and proceedings in this suit, I shall move the honorable court at October term thereof, to be held at Wilkesbarre, on the third Monday of October, A. D. 1874, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order staying all proceedings in this suit in the said court of common pleas of Luzerne County, sitting in equity, and removing this suit from the said court to the circuit of the United States for the western district of Pennsylvania, under the provisions of the act of Congress approved the 27th day of July, A. D. 1866.

Scranton, Aug. 22, 1874.

JOHN HANDLEY.

TO AGILE RICKETTS, ESQ.,
Att'y for Pl'ff.

229 In the court of common pleas of Luzerne County sitting in equity. August term, 1868.

ADDISON SWEETSER, PLAINTIFF,
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND Thomas Jifkins, defendants. } No. 3.

Upon reading and filing the petition of the above-named James Jifkins, j'r, and Thomas Jifkins, two of the defendants herein named, for the removal of this suit into the circuit court of the United States for the western district of Pennsylvania, in the third circuit, in pursuance of the laws of the United States relating to the removal of suits from the State courts, and upon filing security offered by said defendan*dane* according to the requirements of said laws and on motion of John Handley, attorney for the said defendants, it is ordered that the said security be accepted and the said suit be removed into the next circuit court of the United States to be held in the said western district of Pennsylvania, and that no further proceedings be had in said suit in this court.

230 In the common pleas court of Luzerne County. August term, 1868.

ADDISON SWEETSER, PLAINTIFF,
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R., AND Thomas Jifkins, defendants. } No. 3.

To the honorable the judge of said court:

The petition of James Jifkins, j'r, and Thomas Jifkins, of Winchester,

Frederick County, Virginia, respectfully represents that your petitioners are the defendants in this suit, and that the same was brought by Addison Sweetser, the plaintiff, on the 20th day of June, A. D. 1868, in the court of common pleas of Luzerne County, State of Pennsylvania, sitting in equity, and that the said plaintiff is, and was at the time of bringing this suit, a citizen of the State of Pennsylvania, and that your petitioners are now, and since the 12th day of November, A. D. 1864, have been, bona fide citizens of the State of Virginia; and your petitioners further respectfully show that there is and was at the time when this suit was brought a controversy between the said plaintiff, Addison Sweetser, and James Jifkins, j'r, James Jifkins, and Thomas Jifkins, the defendants herein; that all the defendants are citizens of Virginia, and that James Jifkins, now dead, by will made and executed on the 15th day of May, A. D. 1866, devised and bequeathed all his said interest in the matter in controversy in this case to your petitioners,
231 and that the said claims in his bill of complaint filed in this suit real property against your petitioner of the value of thirty thousand dollars, and that the matter in dispute in this suit therefore exceeds the sum of five hundred dollars, exclusive of costs; and your petitioners further respectfully represent that this suit has not been tried, but the same is pending for trial and final hearing at Luzerne County, Pennsylvania, and that your petitioners desire to remove this suit before the trial thereof into the next circuit court of the United States, to be held in the western district of Pennsylvania in the third circuit court, in pursuance of the provisions of law contained in the act of Congress approved July 27th, A. D. 1866, entitled "An act for the removal of causes in certain cases from State courts," as amended by the act of Congress approved March 2, 1867, entitled "An act to amend an act entitled 'An act for the removal of causes in certain cases from State courts,' approved July 27, 1866." And your petitioners say that they have made and filed the affidavit required by said amendatory act, whereof a certified copy is hereto annexed, marked "A," which they pray may be taken as part of this petition; and that they are ready and willing to give such good and sufficient surety which this court may direct for their so doing all acts and things required to be done by the said provisions of law upon the removal of a suit into the United
232 States court, and they offer herewith their bond, executed by J. C. Burgess, conditional that your petitioners shall enter in the next circuit court of the United States to be held in the western district of Pennsylvania, in the third circuit, on the first day of its session, copies of all process, pleadings, depositions, testimony, and other proceedings in this suit, and doing such other and appropriate acts as by the said act of Congress approved the 27 day of July, A. D. 1866, as amended by act of Congress approved March 2d, A. D. 1867, are required to be done upon the removal of a suit into a United States circuit court, as good and sufficient surety according to the said provisions of law upon the removal of a suit into the United States court; and you petitioners therefore pray that the said bond may be accepted as goo and sufficient surety according to the said provisions of law, and tha the said suit may be removed into the next circuit court of the United States to be held in the western district of Pennsylvania, in the third circuit, to the statute of the United States in such case made and provided, and that no further proceedings may be had thereon in this court. And your petioners will ever pray, &c.

JAMES JIFKINS, J'R.
THOMAS JIFKINS.

STATE OF PENNSYLVANIA,
Luzerne County, ss:

James Jifkins, j'r, and Thomas Jifkins, the petitioners in the
233 foregoing petition, being duly sworn, depose and say that they have read the petition subscribed by them and know the contents thereof, and that the same is true of their own knowledge, except as to those matters therein stated on information and belief, and as to those matters they believe them to be true, and further saith not.

JAMES JIFKINS, J'R,
THOMAS JIFKINS.

Sworn and subscribed before me this 22 day of August, A. D. 1874.

E. P. KINGSBURY,
Notary Public.

234 In the common pleas court of Luzerne County, sitting in equity.
August term, 1868.

ADDISON SWEETSER, PLAINTIFF,
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND Thomas Jifkins, defendants. } No. 3.

We, James Jifkins, j'r, and Thomas Jifkins, of Winchester, State of Virginia, as principal, and J. C. Burgess, of Scranton, Luzerne County, Pennsylvania, are held and firmly bound unto Addison Sweetser, of Scranton, Pennsylvania, in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said Addison Sweetser, his executors or assigns, for which payment, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 22nd day of August, A. D. 1874.

Whereas a suit was brought on the 12th day of June, A. D. 1868, in the court of common pleas sitting in equity, by the said Addison Sweetser against the said James Jifkins, j'r, and Thomas Jifkins, and the same is now pending for trial in the said court at Wilkesbarre, and is removable into the circuit court of the United States for the western district of Pennsylvania, in the third circuit, under the act of Congress approved July 27th, A. D. 1866, entitled "An act for the removal
235 of causes in certain cases from the State courts," as amended by the act of Congress approved March 2nd, A. D. 1867, entitled "An act to amend an act for the removal of causes in certain cases from State courts," approved July 27, A. D. 1866.

And whereas James Jifkins is dead, and the said James Jifkins, jr., and Thomas Jifkins have made and filed in the said court of common pleas of Luzerne County, sitting in equity, the affidavits required by the said amendatory act, and have filed their petition in said court of common pleas of Luzerne County, sitting in equity, for the removal of said suit into the next circuit court of the United States to be held in the western district of Pennsylvania:

Now, therefore, the condition of the above obligation is such that if the above-bounden James Jifkins, jr., and Thomas Jifkins, or their legal representatives, shall enter or cause to be entered in the circuit court of the United States for the western district of Pennsylvania, on the first day of its stated session next ensuing after the order of said court of common pleas, sitting in equity, for the removal of said suit into the said circuit court, copies of all process, pleadings, depositions, testimony,

and other proceedings in said suit, and do or cause to be done such other appropriate acts as by said act of Congress approved July 27, A. D. 1866, and as amended by the act of Congress approved March 2, A. D. 1867, are required to be done upon the removal of a suit into a United
236 States court, then the above obligation to be void; otherwise to remain in full and virtue.

JAMES JIFKINS, JR. [SEAL.]
THOMAS JIFKINS. [SEAL.]
J. C. BURGESS. [SEAL.]

STATE OF PENNSYLVANIA,
Luzerne County, ss:

J. C. Burgess, the surety in the foregoing obligation named, being duly sworn, deposes and says that he is a resident of the State of Pennsylvania and a household' therein, and is worth fifty thousand dollars over all his just debts and liabilities, and exclusive of property exempt by law from execution.

J. C. BURGESS.

Sworn and subscribed before me this 22nd day of August, A. D. 1874.

E. P. KINGSBURY,
Notary Public.

STATE OF PENNSYLVANIA,
Luzerne County, ss:

I hereby certify that on the 22d day of August, A. D. 1874, before me personally appeared James Jifkins, jr., and Thomas Jifkins, to me personally known to be the persons described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same as their own free act and deed, and for the uses and purposes therein mentioned.

[SEAL.]

E. P. KINGSBURY,
Notary Public.

237 In the common pleas court of Luzerne County, sitting in equity, August term, 1868.

ADDISON SWEETSER, PLAINTIFF,
vs.
JAMES JIFKINS, JAMES JIFKINS, AND THOMAS JIFKINS, DEFENDANTS. } No. 3.

James Jifkins, jr., and Thomas Jifkins, being duly sworn, depose and say that they are citizens of the State of Virginia, and reside at Winchester, Frederick County, in said State, and are the only defendants living in the above-entitled action; that the same was brought on or about the 12th day of June, A. D. 1868, in the court of common pleas of Luzerne County, sitting in equity; and these deponents further say that they have reason to believe, and do believe, that, from prejudice and local influence, they will not be able to obtain justice in said court, and therefore make this affidavit for the purpose of removing this suit into the circuit court, in pursuance of the statute of the United States in such case made and provided; and further saith not.

JAMES JIFKINS, JR.
THOMAS JIFKINS.

Subscribed and sworn to before me this 22d day of August, A. D. 1874.

E. P. KINGSBURY,
Notary Public.

238 In the common pleas court of Luzerne County, sitting in equity, August term, 1868.

ADDISON SWEETSER, PLAINTIFF,
vs.
JAMES JIFKINS, JAMES JIFKINS, JR., AND Thomas Jifkins, defendants. } No. 3.

STATE OF PENNSYLVANIA,
Luzerne County, ss:

James Jifkins, jr., and Thomas Jifkins, being duly sworn, depose and say that they are the defendants in the above suit, the other defendant, James Jifkins, having died in Virginia on the seventh day of January, A. D. 1873; that the same was commenced on or about the 12th day of June, A. D. 1868, by the plaintiff filing his bill of complaint in equity on and against your deponents; that at the time that the suit was brought, and at the present time, the plaintiff was and is a citizen of the State of Pennsylvania, and the defendants have been and are now bona fide citizens of the State of Virginia since the 12th day of November, A. D. 1869; that between the said plaintiff and defendants there is a controversy, and the matter in dispute exceeds the sum of five hundred dollars, exclusive of costs; that your deponents caused an appearance to be entered by counsel in said suit; and that your deponents have
239 caused to be filed with prothonotary of said court a petition for the removal of the above cause from said court to the United States circuit court for the western district of Pennsylvania, and a bond with good and sufficient security, according to the statute of the United States in such case made and provided; that your deponents desire to move before the term of this court for an order removing the above suit to the United States circuit court as aforesaid; and that the said defendants desire a stay of proceedings herein until the said motion can be made.

JAMES JIFKINS, JR.
THOMAS JIFKINS.

Sworn and subscribed before me this 22d day of August, A. D. 1874.
E. P. KINGSBURY,
Notary Public.

240 In the common pleas court of Luzerne County, sitting in equity, August term, 1868.

ADDISON SWEETSER, PLAINTIFF,
vs.
JAMES JIFKINS, JAMES JIFKINS, JR., AND Thomas Jifkins, defendants. } No. 3.

On reading the affidavit of James Jifkins, jr., and Thomas Jifkins, the defendants in this cause, it is hereby ordered that all further proceedings on the part of the plaintiff in this suit be stayed until November term of this court, to be held at Wilkesbarre on the 16th day of November, 1874.

241 In the common pleas court of Luzerne County. In equity. Aug. T., 1868.

ADDISON SWEETSER, PLAINTIFF,
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND Thomas Jifkins, defendants. } No. 3.

On reading the affidavit of James Jifkins, j'r, and Thomas Jifkins, defendants, it is hereby ordered that all further proceedings on the part of the plaintiff *is* this suit be stayed until October term, 1874, to be held at Wilkesbarre on the third Monday of October, 1874.

E. L. DANA, *Judge.*

Certified from the records, August 24, 1874.

PETER SEIBEL,
Prothonotary,
p. W. FENNEN.

Now, August 24, 1874, notice accepted; copy served,
G. R. BEDFORD, *Master.*

242 In the common pleas court of Luzerne County, sitting in equity, August term, 1868.

ADDISON SWEETSER, PLAINTIFF,
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND Thomas Jifkins, defendants. } No. 3.

DEAR SIR: Please take notice that on the petition of the defendants in this suit, and the bond accompanying the same, and on the notice of appearance of the said defendants herein, and in the affidavit required by the act of Congress approved March 2, 1867, copies of which said petition, bond, notice, and affidavits are herewith served, and on all the papers and proceedings in the suit, I shall move this honorable court, at the November term thereof, to be held at Wilkesbarre on the 12th day of November, A. D. 1874, at 12 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order staying all proceedings in this suit in the court of common pleas, sitting in equity, and removing this suit from the said court to the circuit court of the United States for the western district of Pennsylvania, under the provision of the act of Congress approved March 2nd, A. D. 1867.

Yours, &c.,

JOHN HANDLEY,
Att'y for Def't.

To A. RICKETTS,
Att'y for Pl'ff.

243 In the common pleas court of Luzerne County. August term, 1868.

ADDISON SWEETSER, PLAINTIFF,
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND Thomas Jifkins, defendants. } No. 3.

Upon reading and filing the petition of the above-named James Jif-

kins, j'r, and Thomas Jifkins, the defendants herein, for the removal of this suit into the circuit court of the United States for the western district of Pennsylvania, in the third circuit, in pursuance of the law of the United States relating to the removal of suits from the State courts, and upon filing the security offered by said defendants according to the requirements of said law, and on motion of John Handley, esq., attorney for said defendants, it is hereby ordered that the said security be accepted, and the said suit be removed into the next circuit court of the United States, to be held in the said western district of Pennsylvania, and that no further proceedings be had in said suit in this court.

Now, Nov'r 9, 1874, served a true and correct copy of the above petition, bond, rule, and notice on A. Ricke'ts, esq., by handing him personally a true and correct copy of the same.

JOHN HANDLEY.

Sworn and subscribed before me this 9th day of Nov'r, 1874.

M. E. GAUGHAM,
For Prot.

244 In the common pleas court of Luzerne County. In equity. Aug. term, 1868.

ADDISON SWEETZER
vs.
JAMES JIFKINS ET AL. } No. 3.

Application of defendants to remove this case to the United States circuit court.

Application for the removal of this case was first made under the act of Congress approved July 27, 1856.

A removal is also asked for under an act of March 2nd, 1867.

We are of opinion that both applications are to' late, and they are refused.

The substantial question in the case has been disposed of on appeal by the supreme court. (Sweetser's appeal, 21st P. F. Smith, 264.) Without setting aside the judgment of the supreme court of this State, as of the validity, the case cannot be removed to the U. S. circuit court, and then be proceeded in in the same manner as if brought there by original process. No such proceeding is contemplated by this act. (Stephen vs. William, U. S. Supreme Court, 6 Leg. Gaz., 326.) The words final hearing designate the trial of an equity case upon the merits as distinguished from the hearing of any preliminary questions arrising
245 in the cause, and which are termed interlocutory. (Akerly vs. Viles, 8th Am. Law Reg, 558.) There having been an adjudication as to the vital and governing question in the case, we are of the opinion that it has passed the stage for removal under either act of Congress.

E. L. DANA, *Judge.*

246 In the common pleas court of Luzerne County. August term, 1868.

ADDISON SWEETSER
vs.
JAMES JIFKINS ET AL. } No. 3.

Make out certified copies of all pleadings, depositions, testimony, and

all other proceedings in this cause, and file same in the United States circuit court for the western district of Pennsylvania, at Pittsburgh

JOHN HANDLEY,
Att'y for Defendant.

To PETER SEIBEL, Esq.,
Prothonotary.

Nov'r 6, 1874.

247 STATE OF PENNSYLVANIA,
Luzerne County, ss:

I, Peter Seibel, prothonotary of the court of common pleas in and for said county of Luzerne, do certify that the above and foregoing is a correct copy of the docket entry of the case therein stated, and of the petition and application for the removal of the said cause to the United States circuit court for the western district of Pennsylvania, together with certified copies of all process, pleadings, depositions, testimony, and other proceedings in this suit, and the opinion of the court thereon, as the same now remains of record in said court.

In witness whereof I have hereunto set my hand and the seal of said court, at Wilkesbarre, this 19th day of November, 1874.

PETER SEIBEL,
Prothonotary.

COMMONWEALTH OF PENNSYLVANIA,
Luzerne County, ss:

I, Garrick M. Harding, president judge of the court of common pleas, orphans' court, and court of quarter sessions of the peace, &c., in and for the county of Luzerne, do certify that Peter Seibel, by whom the annexed record, certificate, and attestation were made, and who,
248 in his own proper handwriting, has thereunto subscribed his name, and affixed his official seal, was at the time of so doing, and now is, prothonotary of the court of common pleas in and for said county, duly commissioned and qualified, to all whose acts as such full faith are and ought to be given as well in courts of judicature as elsewhere; and that the said record, certificate, and attestation are in due form of law, and by the proper officer.

In testimony whereof I have hereunto set my hand this nineteenth day of November, A. D. 1874.

GARRICK M. HARDING,
President Judge.

COMMONWEALTH OF PENNSYLVANIA,
Luzerne County, ss:

I, Peter Seibel, prothonotary of the court of common pleas in and for said county of Luzerne, do certify that the honorable Garrick M. Harding, by whom the foregoing certificate and attestation were made, and who has thereunto subscribed his name, was at the time of making thereof, and still is, president judge of the common pleas, orphans' court, &c., in and for the said county, duly commissioned and qualified; to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

249 In testimony whereof witness my hand and the seal of said court, at Wilkesbarre, this nineteenth day of November, A. D. 1874.

[SEAL.]

PETER SEIBEL,
Prothonotary.

250 *Pleadings and proceedings in the circuit court of the United States for the western district of Pennsylvania.*

United States circuit court for the western district of Pennsylvania, May term, 1875. In equity.

ADDISON SWEETSER
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND THOMAS JIFKINS. } No. 10.

And now, to wit, December 19th, 1874, on motion of S. A. & W. S. Purviance, of counsel for defendants' rule to show cause why a master should not be appointed to take testimony in this case on behalf of plaintiff and defendant, and report the same with his conclusions of fact and the form of a decree to the court, granted, returnable January 9th, A. D. 1875, at 10 o'clock a. m.; notice of this rule to be served on Mess'rs Ricketts, Ward, and McClintock, or one of them, counsel for plaintiff.

By the court.

251 In the circuit court of the United States for the western district of Pennsylvania. May term, 1875. In equity.

ADDISON SWEETSER
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND THOMAS JIFKINS. } No. 10.

And now, to wit, December 19th, 1874, on motion of L A. & W. S. Purviance, of counsel, of defendants' rule to show cause why a master should not be appointed to take testimony in this case on behalf of plaintiff and defendant, and report the same with his conclusions of fact and the form of a decree to the court, granted, returnable January 9th, A. D. 1875, at 10 o'clock a. m.; notice of this rule to be served on Mess'rs Ricketts, Ward, and McClintock, or one of them, counsel for plaintiff.

By the court.

From the recor.

[SEAL.] H. D. GAMBLE, *Clerk.*

To Mess'rs Ricketts, Ward, and McClintock, attorneys for pl'ff:

You will please take notice that, in pursuance of the above rule, the defendants, by their counsel, will make application for the appointment of a master in this case at the time and place mentioned in the
252 above rule to show cause.

JOHN HANDLEY,
Att'y for Defendants.

SCRANTON, P'A, *Dec.* 29, 1874.

Now, December 29th, 1874, served copy of the above and within rule and notice on A. Ricketts, esq., of counsel for plaintiff, at Wilkesbarre, Luzerne County, State of Pennsylvania, by handing him personally a true and correct copy of the rule and notice, and by showing to him the original rule and notice, an exact copy of which is hereto attached and marked "A."

HENRY A. KNAPP.

Personally appeared before me, an alderman in and for the city of Scranton, Henry A. Knapp, who, after being duly sworn, says that the above return is true and correct, and that the copy of said rule and notice is exact, and that the time and manner of service are truly stated.

HENRY A. KNAPP.

Sworn and subscribed before me this 30th day of December, A. D. 1874.

LEWIS S. WATERS.

253 In the circuit court of the United States for the western district of Pennsylvania, May term, 1868.

ADDISON SWEETSER *vs.* JAMES JIFKINS ET AL. } No. 10.

And now, January 23, 1875, on motion of A. Ricketts, esq., attorney for plaintiff, a rule to show cause why this case should not be remanded to the common pleas court of Luzerne County granted.

By the court.

H. D. GAMBLE, *Clerk.*

Service accepted this January 23d, 1875.

W. S. PURVIANCE,
Attorney for Respondents.

254 In the circuit court of the United States for the western district of Pennsylvania, May term, 1875. In equity.

ADDISON SWEETSER *vs.* JAMES JIFKINS, THOMAS JIFKINS, AND JAMES Jifkins, j'r. } No. 10.

And now, to wit, February 27, 1875, the rule entered in the above case on the 23rd day of January, A. D. 1875, to show cause why this case should not be remanded to the common pleas court of Luzerne County, Pennsylvania, having been fully argued, and the court having considered the same, entered the following order:

"Motion allowed and cause remanded to the court of common pleas of Luzerne County, Pennsylvania."

Per curiam.

H. D. GAMBLE, *Clerk.*

255 In the circuit court of the United States for the western district of Pennsylvania, May term, 1875. In equity.

ADDISON SWEETSER *vs.* JAMES JIFKINS ET. AL. } No. 10.

And now, to wit, 13th March, 1875, it appearing to the court that no certificate of the order of date February 27, 1875, made by this court remanding the case to the common pleas of Luzerne County, Pennsylvania, has been taken out by the plaintiff or his counsel, on motion of counsel

for respondent, and for good reasons shown the court, the said order of February 27, 1875, is opened and vacated, and the rule to show cause why the case should not be remanded to the court of common pleas of Luzerne County, Pennsylvania, reinstated on the record, and a reargument of the same ordered to take place March 29th, 1875. Notice of this order to be given forthwith by clerk Gamble to A. Ricketts, esq., of Wilkesbarre, Pennsylvania, counsel for plaintiff.

By the court.

256 In the circuit court of the United States for the western district of Pennsylvania, May term, 1875. In equity.

ADDISON SWEETSER
vs.
JAMES JIFKINS ET AL. } No. 10.

And now, to wit, March 20, 1875, this case came on to be heard on the rule taken by plaintiff of date 23rd January, A. D. 1875, "to show cause why the above case should not be remanded to the common pleas court of Luzerne County," on reargument, as per the order of court of March 13th, 1875, and thereupon, after argument by W. S. Purviance, of counsel for defendants, the court makes said rule absolute, and orders that the case be remanded to the common pleas court of Luzerne County, Pennsylvania.

By the court.

257 In the circuit court of the United States for the western district of Pennsylvania, May term, 1875. In equity.

ADDISON SWEETSER
vs.
JAMES JIFKINS, THOMAS JIFKINS, AND JAMES Jifkins, j'r. } No. 10.

And now, September sixth, 1876, the defendants appeal from the final decree or order of the said circuit court made in the above-entitled cause on the 20th day of March, 1875, to the supreme court of the United States.

H. M. HOYT,
F. CARROLL BREWSTER,
W. S. PURVIANCE,
Att'ys for Appellants.

UNITED STATES,
Western District of Pennsylvania:

Thomas Jifkins, one of the above-named appellants, having been duly sworn according to law, doth depose and say that the above appeal is not for delay.

THOMAS JIFKINS.

Sworn and subscribed before this sixth day of September, A. D. 1876
[SEAL.] GUSTAV HAHN,
United States Commissioner.

Appeal allowed—bail to be entered in $500.00.
W. MCKENNAN, *Cir. J.*

SEPT. 9, 1876.

REC. 205—7

258 In the circuit court of the United States for the eastern district of Pennsylvania. May term, 1875.

ADDISON SWEETSER
vs.
JAMES JIFKINS, JAMES JIFKINS, J'R, AND THOMAS Jifkins. } No. 10.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, H. D. Gamble, clerk of the circuit court of the United States for the said district, do hereby certify that the annexed and foregoing pages contain a true copy of the record and proceedings in the above-entitled case, so full and entire as the same remains of record and on file in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this 17th day of May, A. D. 1876.

H. D. GAMBLE, *Clerk.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, William McKennan, judge of the United States circuit court for said district, do hereby certify that H. D. Gamble, above named, was at the time of making the above certificate, and is now, clerk of the said court, and that the said certificate made by him is in due form of law.

W. McKENNAN,
U. S Circuit Judge.

PITTSBURGH, *May* 17, 1876.

(Indorsment on cover:) No. 205. James Jifkins, Thomas Jifkins, and James Jifkins, j'r, appellants, vs. Addison Sweetser. W. Pennsylvania C. C. U. S. Filed 9th October, 1876.

IN THE

SUPREME COURT OF THE UNITED STATES,

No. 205.

JAMES JIFKINS, et al.,

Appellants,

vs.

ADDISON SWEETSER,

Appellee.

PAPER BOOK OF APPELLANTS.

H. M. HOYT,
W. S. PURVIANCE,
F. CARROLL BREWSTER,
Pro Appellants.

Chandler, Pr., 306 & 308 Chestnut street, Philadelphia.

In the Supreme Court of the United States.

No. 205.

JAMES JIFKINS, THOMAS JIFKINS AND JAMES JIFKINS, JR.,

APPELLANTS,

vs.

ADDISON SWEETSER,

APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

Statement of the Case.

This cause was commenced June 20, 1868, by a bill filed by Addison Sweetzer against James Jifkins, Thomas Jifkins and James Jifkins, jr., in the Court of Common Pleas of Luzerne County, Pennsylvania, sitting in Equity to No. 3, August Term, 1868.

The bill substantially charged, through the machinery of a Sheriff's sale, a mortgage by the plaintiff to

the defendants, of the property called the "Washington Hall," in the City of Scranton, the possession of the property by the defendant's, praying for an account from the defendants and a reconveyance of the same by the defendants to the plaintiff. The defendants, in their answer, denied the allegations of the bill, and claimed "Washington Hall" as *bona fide* purchasers. The case was referred to an Examiner and Master, who reported that the plaintiff was not entitled to the relief prayed for. After argument on exceptions the Court, on February 20, 1871, entered a decree "dismissing the plaintiff's bill with costs."

From this decree an appeal was taken by Sweetzer to the Supreme Court of Pennsylvania, in which Court, on May 13, 1872, the following decree was entered:—

"The decree of the Court below, dismissing the "plaintiff's bill, is reversed, and the bill is ordered to "be reinstated; the case to be referred by the Court be- "low to the same Master, or some other, to take an ac- "count of the rents, issues, and profits, received by the "defendants from the property in question, together "with an account of debts paid by them, due by the "plaintiff, with an equitable allowance for services ren- "dered by the defendants—ascertaining the amount "due by either party to the other, if any, *so as to* en- "able the *Court of Common Pleas to make a final de- "cree in the premises, according to equity.*"

The record was remanded to the Court of Common Pleas of Luzerne County, the case referred to the Master to state an account between the parties, and no further action was had in that behalf except per-

haps an occasional motion by the plaintiff upon the Master "to speed his report."

On the twelfth day of November, 1869, the defendants became *bona fide* citizens of Virginia, and James Jifkins, one of the defendants, died there on January 7, 1873, having, by Will dated May 15, 1866, devised to the other defendants his estate in the premises in dispute.

On August 24, 1874, and November 9, 1874, the surviving defendants filed their petition in the Court of Common Pleas of Luzerne County, sitting in Equity, setting forth, *inter alia*, their citizenship in the State of Virginia since November 12, 1869, the fact that the amount in controversy exceeded five hundred dollars, and that there had not yet been a trial and final hearing in the Courts of Pennsylvania, and praying for a removal of the cause to the next Circuit Court of the United States to be held in the Western District of Pennsylvania. To this motion the plaintiff appeared. *He filed no answer or other paper to the petition*, and after argument before the Court the application for removal was refused by decree entered in that Court. Upon such refusal the defendants filed, under the Acts of Congress of 1866 and 1867, certified copies of the whole record in the United States Circuit Court for the Western District of Pennsylvania, to No 10, May Term, 1875.

On January 23, 1875, the plaintiff took a rule to remand the record to the State Court, and on February 27, 1875, the Circuit Court of the United States remanded the cause to the Court of Common Pleas of Luzerne County.

The Court subsequently, on motion, vacated the order remanding the cause to the State Court and ordered a re-argument of the rule, and finally, on March 20, 1875, the Court again ordered that the case be remanded to the Common Pleas of Luzerne County.

From this order the defendants have appealed, and have filed the following:—

Assignment of Error.

The Court below erred in remanding the above cause to the Court of Common Pleas of Luzerne County.

Argument for Appellants.

The Act of Congress, approved March 2, 1867, being the amendment to the Act for removal of causes in certain cases from State Courts, provides, "that "where *a writ is now pending*, or may hereafter be "brought, in any State Court *in which there is contro-* "*versy* between a citizen of the State in which the suit "is brought and a *citizen* of another State, and the "matter in dispute exceeds the sum of five hundred "dollars, exclusive of costs, *such citizen of another* "State, whether he be plaintiff or defendant, if he will "make and file in such State Court an affidavit stating "that he has reason to and does believe that from "prejudice or local influence he will not be able to ob- "tain justice in such State Court, may, *at any time be-* "*fore the final hearing* or trial of the suit, file a petition "in such State Court for the removal of the suit into

"the next Circuit Court of the United States to be held "in the district where the suit is pending, and offer "good and sufficient surety for his entering in such "Court on the first day of its session copies of all pro- "cess, pleadings, depositions, testimony, and other pro- "ceedings in said suit, and doing such other appropri- "ate acts as by the Act to which this Act is amenda- "tory are required to be done upon the removal of "a suit into the United States Court, and it shall be "thereupon the duty of the State Court to accept the "surety and proceed no further in the suit, and the "said copies being entered as aforesaid in such Court "of the United States, the suit shall there proceed in "the same manner as if it had been brought there by "original process," etc.

The record filed in the Court below, under the Acts of Congress above referred to, contained a petition for the removal of the cause which was in proper form and embraced all the facts necessary to bring the parties within the provisions of said Acts of Congress.

No denial has been made of the facts therein alleged.

Knickerbocker Life Insurance Company vs. *Gorbach*, 70 Penna. St. R., 20 Smith, 150.

In *Johnson* vs. *Morrell*, 1 Woolworth, C. C., 370, it was determined that a party to a suit who, while it is pending, became, *bona fide*, a citizen of another State is entitled, if the other required conditions are met, to have the cause removed.

In *McGinnity* vs. *White, et al.*, (U. S. C. C., Nebraska, 1874, DILLON and DUNDY, Judges,) reported in

"*Central Law Journal*" May 14, 1874, it is said "the "Act twenty-seventh July, 1866, makes important "change in Section 12 of the Judiciary Acts in *extend-* "*ing the time* in which the application for the removal "may be made down to the trial or final hearing; and "that in this respect there is no difference between the "Acts of 1866 and 1867."

The learned Judge of the Court below seems to have inquired as to *the fact alleged in the petition and not denied by the appellee*, and to have decided that it was *not* a fact. The petitioners had said by their petition and affidavits "that this suit has not been "tried, but the same is pending for trial and final hear- "ing at Luzerne County." Now there is nothing on the record made on this question of removal which contains any denial of the fact thus alleged. It seems to us to have been error in the learned Judge to have found against a fact established by the affidavit of appellants' and by the record, and not denied by the appellee.

It is submitted that the Court below should not have remanded the cause to the State Court on the theory that there had been a "final hearing" of the case.

The decree, by the Supreme Court, of May 13, 1872, operated only to reinstate the plaintiff's bill, which had been dismissed. This was not a "final hearing." At most the matter is before the Master, under directions of the Court of Common Pleas of Luzerne County for the "stating of an account." The principles upon which that account is to be stated we submit are reviewable both by the Court of Common Pleas and the

Appellate Court. The whole case is open to a review when it again comes up before the Supreme Court of Pennsylvania, and if that Court should then find error in their former decree—should find that the equities of the cause should be rebuilt from new foundations—then surely there has not yet been a "final hearing."

In the case of *Akerly* vs. *Vilas, et al., 8 Amn. Law Register, 229,* the United States Circuit Court for the District of Wisconsin decided that where a State County Court had given judgment which had been reversed by the Supreme Court of the State and the case remanded for further proceedings, the cause had not reached final hearing or trial, and a motion to remove to an United States Court was in time.

In the case of *Insurance Company* vs. *Dunn,* 19 Wallace, 214, (1873,) there had been a verdict—a motion for a new trial and a judgment entered on the verdict in favor of the plaintiff, yet it was held that this was not a *final* judgment because the "New Trial Act" of Ohio, passed April 12, 1858, (*Swan and Critchfield's Statutes,* 1155,) allowed a second trial upon filing bond, etc.

The defendants below complied with this Statute and thereupon at the next term filed their petition in the Common Pleas to remove the case to the Circuit Court of the United States, under the Act of 1867. The Court of Common Pleas ordered the removal, but the plaintiff secured a reversal of this order in the District Court, and the Supreme Court of the State affirmed the District Court. The plaintiff thereupon obtained a second verdict and judgment. The record

having been removed to the Supreme Court of the United States it was there argued that the first judgment was final, and that there was no right of removal.

This Court (Opinion by MR. JUSTICE SWAYNE,) said:—

"It is maintained by the counsel for the administra-
"trix that the order for removal by the Common Pleas
"was erronously made, the first verdict and judgment
"being 'final' within the meaning of the Act of Con-
"gress and the laws of Ohio; if the point be well
"taken, the judgment must be affirmed, otherwise it
"must be reversed.

"It is not denied that the requirements of the Act
"of Congress were fully complied with. No question
"is raised upon that subject. The proposition involves
"the construction and effect of the Act, and of the laws
"of Ohio, under which the transfer was made.

"The Act declares that petition may be filed 'at any
"time before the final hearing or trial of the suit.' It
"is contended that the qualifying adjective *final* ap-
"plies to the term 'hearing,' and not to 'trial,' and
"that any *trial*, whether final or not, is conclusive
"against the petitioner. This is too narrow a view.
"It is contrary to the grammatical construction, and
"the obvious import of the words. The repetition of
"*final* before *trial* would have been tautology. To
"produce such a result as that contended for, the in-
"definite article should have been placed before the
"word 'trial,' so that the language would have been
"before the final hearing *or a trial*. This would
"doubtless have been done if such had been the intent

"of the Act. The statute is remediable and must be "construed liberally. This is no reason for interpo- "lating this limitation. The adjective must be taken "distributively and applied as well to the second as to "the first term, and to both alike. The test is whether "the hearing or the trial is the final one in the cause. "It would be a strange anomaly if in equity and admi- "ralty cases a final hearing only could take away the "right of removal, while any trial, however interlocu- "tory in its character, should have the same effect in "an action at law. This would be in conflict alike "with the letter, the spirit, and the meaning of the "Act, and would largely defeat the purposes of its en- "actment. It was intended to permit the removal at "any time before a hearing *or trial*, final in the cause "as it stood, when the application for the transfer was "made.

"The proposition that the first judgment of the Com- "mon Pleas was final within the meaning of the laws "of Ohio cannot be maintained. To say that there "can be *two* final judgments upon the same pleadings, "in the same cause, in the same Court, and for exactly "the same things, as the results of two successive tri- "als, involves a solecism."

In *Gaines* vs. *Fuentes*, 2 Otto, 10, (1875,) the right of removal was sustained as against a bill to vacate a decree of the Supreme Court of Louisiana establishing a Will.

This is not an application to remove pending an appeal in the State Supreme Court as in *Lowe* vs. *Williams*, 4 Otto, 650, (1876,) where this Court, (Opin-

ion by Mr. CHIEF JUSTICE WAITE,) quashed the Writ-of Error, the petition for removal having been presented to the Supreme Court of Nebraska after final judgment in the lower Court.

But here the only judgment entered was in our favor, dismissing the bill. Our adversary procured a reversal of that order. His bill, therefore, no longer stands dismissed, and no final order had been made thereon up to the date of the application to remove.

The judgment of reversal entered by the Supreme Court of Pennsylvania was simply equivalent to the award of a *venire facias de novo* in a suit at law.

The parties who endeavored to maintain that such an order was final failed in *Brown* vs. *Bank*, 4 How., 465, (1846,); *Mayberry* vs. *Thompson*, 5 How., 121, (1847).

Houston vs. *Moore*, 3 Wheaton, 433, (1818,) was in principle exactly like the present case. The Supreme Court of Pennsylvania reversed the judgment of the lower Court and ordered a *venire facias de novo*. From this reversal a Writ-of-Error was taken to the Supreme Court of the United States, but MARSHALL, C. J., said this was not a *final judgment* of the Supreme Court of Pennsylvania, and dismissed the Writ-of-Error.

In *Gibbons* vs. *Ogden*, 6 Wheaton, 448, (1821,) there was an appeal from an order refusing to dissolve an injunction. The Appellate State Court affirmed the decree of the Court below. An appeal was taken to the Supreme Court of the United States, which dismissed on the ground that the decree was not final.

In *Winn* vs. *Jackson*, 12 Wheaton, 135, (1827,) the judgment of the Supreme Court of Kentucky sustaining the validity of a State Statute, but remanding the case to the lower Court "*for further proceedings* not "inconsistent with the decision of the Court of Ap- "peals," was held by this Court not to be a final judgment.

So too in Equity cases:—

The grant of a *perpetual injunction* was held not to be a final judgment, because the decree awarding it referred the case to a Master to report the damages. *Planing Machine case*, *Barnard* vs. *Gibson*, 7 How., 650, (1849,) McLEAN, J. The bill was not dismissed, nor was there a decree for costs.

A cross-bill was dismissed in *Ayres* vs. *Carver*, 17 How., 592, (1854,) yet it was held that this was not a final decree. Opinion by NELSON, J.

In *Craighead* vs. *Wilson*, 18 How., 199, (1855,) the plaintiff's claim as heir was established, but the matter having been referred to a Master, it was held that no appeal lay. Opinion by McLEAN, J.:—

"The basis of the decree embracing the equities in "the Bill is found, but the distribution among the par- "ties in interest depends upon the facts to be report- "ed by the master. * * * *The decree is not final.*"

In *Mordecai* vs. *Lindsay*, 19 How., 199, (1856,) there was a decree in favor of the libellants, but there was a reference to the clerk "to ascertain the charges." It was held that this was not appealable. Opinion by WAYNE, J.

In *Beebe* vs. *Russell*, 19 How., 284, (1856,) the decree was for the execution of a conveyance and surrender of possession. But it was accompanied with a reference to a Master for an account. This Court dismissed the appeal, the decree not being final. Opinion by WAYNE, J.:—

"The reference of a case to a Master to take an account upon evidence, * * and to make or not "to make allowances, * * and to report results "to the Court, is *not a* final decree," etc.

Farelly vs. *Woodfolk*, 19 How., 288, (1856,) was a case almost identical in principle with that last cited. There was a decree for a conveyance, but there was also a reference to a Master. The appeal was dismissed. Opinion by WAYNE, J.

In *United States* vs. *Fossatt*, 21 Howard, 445, (1858,) there was a decree for the land claimed by the plaintiff, but it was left to the District Court to establish the boundaries, which it did on three sides, leaving the other line to be computed by a survey to be made. From this decree the United States appealed, and CAMPBELL, J., in dismissing the appeal, said:—

"Until the whole direction is complied with no appeal lies."

In *Potter* vs. *Mack*, 3 Fisher's Patent Cases, 429, (1868,) a decree was entered establishing the validity of a patent and granting a perpetual injunction against the defendant and referring the case to a Master to state an account. SWAYNE, J., held that the decree *was not to be considered final for the purposes of appeal until after the coming in of the Master's Report.*

We therefore submit that the decree remanding the cause to the Common Pleas of Luzerne County should be reversed and the record reinstated.

H. M. HOYT,
W. S. PURVIANCE,
F. CARROLL BREWSTER,
For Appellants.

In the Supreme Court of the United States.

No. 205.

JAMES JIFKINS, ET AL.,

APPELLANTS,

vs.

ADDISON SWEETSER,

APPELLEE.

PAPER BOOK OF APPELLEE.

A. RICKETTS,
Counsel for Appellee.

In the Supreme Court of the United States

JAMES JIFKINS, THOMAS JIFKINS and JAMES JIFKINR, JR.,
Appellants,
vs.
ADDISON SWEETSER,
Appellee.

No. 205.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

ARGUMENT FOR APPELLEE.

The position of appellants is based upon the confounding the terms final *hearing* and final *decree*. It is clear that they are not identical. For instance, in a case like the present, when a case has been heard by the Court upon the pleadings and proofs, and is held under advisement, the final *hearing* has been had, although there is no decree, nor even the decision of the Court. Again, when the decision of the Court is rendered, whether it be one resulting in a final decree, or simply in a decree for an account, in either case the fact that the final *hearing* has been had is in no wise affected. The laws regulating appeals, do not permit an appeal until a final *decree;* the laws regulating the removal of causes from State Courts, require the application for re-

moval to be made *before* the final *hearing or trial* of the suit. "The hearing or trial here referred to, is the examination of "the facts in issue. Hearing applies to suits in Chancery, "trial to actions at law."

Vannever v. Bryant, 21 Wall. 41, 43.

In *Adams Express Co. v. Trego 35, Md. 47,* it is held that under the Act of 1867, the affidavit for removal must be filed before the commencement of the trial, not simply at any time before the conclusion.

See also *Stevenson v. Williams, 19 Wall. 572.*

After a suit has been determined on the merits, it is not transferable, although an appeal may have been taken, or a second trial allowed under statute

Home &c. Insurance Co. v. Dunn, 20 Ohio St. 175.

Evans v. Kimball id. 183.

Under the Act of 1866, a removal will not be allowed if the application is made for the first time in the Appellate Court of the State.

Beery v. Irick, 22 Gratt. 484.

Miller v. Finn, 1 Neb. 254.

Lowe v. Williams, 4 Otto, 650.

Referring to the statement of the case in appellants' paper book, it will be seen that the appellants removed to Virginia, in November, 1869, and that the decree of the Court of Common Pleas, Sitting in Equity, was not entered until the 20th of February, 1871; this being a decree dismissing the complainant's bill, he appealed to the Supreme Court of the State, and the decision of that Court was not rendered until May 13, 1872. During all this time no application was made for removal. Nor did they make their application until over two years later, to wit, August 24, 1874, and when they could no longer delay the taking of the account before the master. They were certainly too late; for the final *hearing* contemplated by the Act had

been had prior to February 20th, 1871. If no appeal had been taken from the decree dismissing the plaintiff's bill, not even appellants would contend that the final hearing had not been had. The decree of the Supreme Court which will be found in *Sweetser's Appeal, 71 Pa. State R., 264, 276*, re-instated the bill, and directed an acount, &c. The effect of this was practically, to simply place the case in the condition it would have been had the court below, instead of dismissing the bill, decreed an account. It in no wise changed the fact that the final *hearing*, the examination of the facts in issue, had been previously had.

As we understand the decision in *Lowe vs. Welliams, 4 Otto 650*, it is clear against the claim of appellants.

The appellants claim that there is no denial of the facts alleged in their petitions for removal. Inasmuch as the record of the case, of which the Court takes judicial notice, contains a full refutation of their claim as to the material facts, no additional denial was deemed necessary or proper. Certainly mere affidavits are of no importance, either to contradict or corroborate the record. If our position is correct, the record itself shows conclusively that the application for removal was *not* made before final hearing.

A. RICKETTS,
Counsel for Appellee.

NOTE.—We think it proper to add the statement, that a decision in favor of the appellants would simply necessitate an application to strike off the order for removal. For the appellants are no longer citizens of another State, but have returned and are again citizens of Pennsylvania the same as appellee. Thomas Jifkins returned to Scranton, Pennsylvania, about the 5th of September, 1876, and James Jifkins about the 8th of April, 1878.